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Contents

Federal Register

Vol. 67, No. 238

Wednesday, December 11, 2002

Agriculture Department
See Forest Service

Broadcasting Board of Governors
RULES
Sunshine Act meetings; implementation, 76112–76114

Coast Guard
RULES
Drawbridge operations:
Iowa, 76114–76115
Massachusetts, 76116

Commerce Department
See Industry and Security Bureau
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Romania, 76166–76167
Turkey, 76167

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Deshmukh, Minakshi B., M.D., 76192–76193
K-Nine Detectives, 76193–76195
Xtreme Enterprises, Inc., 76195–76198

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 76167–76168

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Active uranium and thorium processing sites; remedial action costs reimbursement, 76169–76170
National Energy Technology Laboratory—
Large Scale Mercury Control Field Testing Program, 76168–76169

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Virgin Islands, 76116–76119
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Virgin Islands, 76150
NOTICES
Air programs:
Ambient air monitoring reference and equivalent methods—
Thermo Andersen Series FH 62 C14 Continuous PM10 Ambient Particulate Monitor, 76174–76175
Pesticide registration, cancellation, etc.:
Diazinon, 76175–76176
Ethoprop, 76176–76177
Pesticides; experimental use permits, etc.:
Dow AgroSciences, 76177–76179
Reports and guidance documents; availability, etc.:
Pesticide registrations; data citation requirements; compliance, 76179
Toxic and hazardous substances control:
New chemicals—
Sustainable Futures; voluntary pilot project, 76280–76292

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
General Electric Co., 76111–76112
MD Helicopters, Inc., 76109–76111
MT-Propeller Entwicklung GmbH; correction, 76111
Pilatus Britten-Norman Ltd., 76106–76109
PROPOSED RULES
Airworthiness directives:
Boeing, 76120–76121

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 76179–76180

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act):
Undue discrimination; remedying through open access transmission service and standard electricity market design
Merchant transmission provider obligation to expand facilities, 76122–76123
NOTICES
Electric rate and corporate regulation filings:
Pacific Gas & Electric Co. et al., 76170–76173
Westar Energy, Inc., et al., 76173
Natural gas companies (Natural Gas Act):
Upland erosion control, revegetation, and maintenance plan and wetland and waterbody construction and mitigation procedures; comment request, 76173–76174
Applications, hearings, determinations, etc.:
Wallingford, CT, et al., 76170

Federal Maritime Commission
NOTICES
Agreements filed, etc., 76180–76181
Ocean transportation intermediary licenses:
Admiral Line, Inc., et al., 76181
Freight Options Unlimited et al., 76181–76182
Pacheco Express Shipping, Inc., et al., 76182

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Recovery plans—
Gabbro soil plants of Central Sierra Nevada Foothills, 76156–76157

NOTICES
Endangered and threatened species and marine mammal permit applications, 76183–76184
Marine mammal permit applications, 76184

Forest Service
NOTICES
Environmental statements; notice of intent:
Lassen National Forest, CA, 76158–76159
Meetings:
Lake Tahoe Basin Federal Advisory Committee, 76159

Health and Human Services Department
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 76182–76183

Immigration and Naturalization Service
RULES
Nonimmigrant classes:
Student and Exchange Visitor Information System; F, J, and M nonimmigrants; information retention and reporting, 76255–76280

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgment of existence determinations, etc.:
Schaghticoke Tribal Nation, CT; proposed denial, 76184–76189

Industry and Security Bureau
NOTICES
Export privileges, actions affecting:
Zisman, Alexander, 76159–76160

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Reclamation Bureau

Internal Revenue Service
PROPOSED RULES
Income taxes:
Accruals and allocations due to age attainment, reductions; and cash balance plans; nondiscrimination cross-testing rules application, 76123–76142
NOTICES
Meetings:
Taxpayer Advocacy Panels, 76209–76210

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Abb, Inc., et al., 76191
Kennecott Holdings Corp. et al., 76191–76192
Trident Seafoods Corp., 76192

Labor Department
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Survey plat filings:
Oregon, 76189

Local Television Loan Guarantee Board
RULES
Procedural rules, 76105–76106

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Alaska OCS—
Oil and gas lease sales, 76189–76190

National Oceanic and Atmospheric Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Global Ocean Data Assimilation Experiment, 76161–76164

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Florida Power Corp., 76198–76199
Meetings:
Nuclear Waste Advisory Committee, 76199–76200

Occupational Safety and Health Administration
PROPOSED RULES
Shipyard employment safety and health standards:
Fire protection, 76213–76253

Patent and Trademark Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 76164–76166

Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 76198

Presidential Documents
PROCLAMATIONS
Special observances:
National Pearl Harbor Remembrance Day (Proc. 7633), 76103–76104

Public Debt Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 76210–76212

Public Health Service
See Health Resources and Services Administration

Reclamation Bureau
NOTICES
Meetings:
Glen Canyon Dam Adaptive Management Work Group, 76191

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 76200–76205

Small Business Administration
NOTICES
Disaster loan areas:
New Jersey and New York, 76205

Surface Transportation Board
NOTICES
Railroad services abandonment:
Burlington Northern & Santa Fe Railway Co., 76205–76206
Union Pacific Railroad Co., 76206

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

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Surface Transportation Board
PROPOSED RULES
Personnel:
Board for Correction of Coast Guard Military Records; application procedures clarification, etc., 76142–76150

Treasury Department
See Internal Revenue Service
See Public Debt Bureau
PROPOSED RULES
Acquisition regulations:
Revision, 76150–76156
NOTICES
Reports and guidance documents; availability, etc.:
Terrorism Risk Insurance Act of 2002; new statutory and mandatory availability requirements, 76206–76208
Terrorism insurance legislation:
Group life insurance availability; impact of terrorism threat; study, 76208–76209

Separate Parts In This Issue

Part II
Labor Department, Occupational Safety and Health Administration, 76213–76253

Part III
Justice Department, Immigration and Naturalization Service, 76255–76280

Part IV
Environmental Protection Agency, 76280–76292

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
7633.....76103

7 CFR
2200.....76105

8 CFR
103.....76256
214.....76256
248.....76256
274a.....76256

14 CFR
39 (4 documents) 76106, 76109, 76111
Proposed Rules:
39.....76120

18 CFR
Proposed Rules:
35.....76122

22 CFR
507.....76112

26 CFR
Proposed Rules:
1.....76123

29 CFR
Proposed Rules:
1915.....76214

33 CFR
117 (2 documents) 76114, 76116
Proposed Rules:
52.....76142

40 CFR
62.....76116
Proposed Rules:
62.....76150

48 CFR
Proposed Rules:
Ch. 10.....76150

50 CFR
Proposed Rules:
17.....76156

Federal Register
Vol. 67, No. 238
Wednesday, December 11, 2002

Presidential Documents

Title 3—

The President

Proclamation 7633 of December 6, 2002

National Pearl Harbor Remembrance Day, 2002

By the President of the United States of America

A Proclamation

Early on a quiet Sunday morning on December 7, 1941, aircraft of the Empire of Japan, without provocation or warning, attacked the United States forces at Pearl Harbor, Hawaii. More than 2,400 Americans died that day and another 1,100 were wounded, in what was the start of a long and terrible war against the forces of fascism, tyranny, and imperialism.

Out of that surprise attack grew a steadfast resolve to defend the freedoms on which our Nation was founded. From the ruins of Pearl Harbor, America built the strongest Navy in the world and emerged as a superpower to lead a coalition of allies to victory over evil in World War II. Our Soldiers, Sailors, Airmen, and Marines fought and won many crucial battles, defeating history's most powerful tyranny. Our Nation must always remember the heroism, dedication, and sacrifice of those who served. Their courage in battle continues to inspire us today as our Armed Forces fight against terrorism in Afghanistan and around the world.

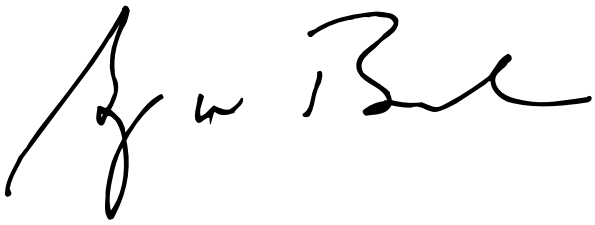
The men and women who fought for America at Pearl Harbor not only protected our Nation, but also helped to shape its character. Nine Americans who fell had Navy ships named after them, and 15 men earned the Medal of Honor for bravery, with 10 of them awarded the Medal posthumously. As we remember the lost on what President Franklin Delano Roosevelt called ''a date which will live in infamy,'' I encourage our veterans to share their experiences with our youth so that new generations can learn about this important moment in our history.

Today, we salute our veterans of Pearl Harbor and World War II, whose sacrifices saved democracy during a dark hour. In their memory, a new generation of our Armed Forces goes forward against new enemies in a new era. Once again, we pledge to defend freedom, secure our homeland, and advance peace around the world. Americans have been tested before, and our Nation will triumph again.

The Congress, by Public Law 103–308, as amended, has designated December 7, 2002, as ''National Pearl Harbor Remembrance Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim December 7, 2002, as National Pearl Harbor Remembrance Day. I encourage all Americans to observe this solemn occasion with appropriate ceremonies and activities. I urge all Federal agencies, interested organizations, groups, and individuals to fly the flag of the United States at half-staff this and every December 7 in honor of those who died as a result of their service at Pearl Harbor.

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



[FR Doc. 02–31380
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Rules and Regulations

Federal Register

Vol. 67, No. 238

Wednesday, December 11, 2002

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

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

LOCAL TELEVISION LOAN GUARANTEE BOARD

7 CFR Part 2200

Local Television Loan Guarantee Board; Procedural Rules

AGENCY: Local Television Loan Guarantee Board.

ACTION: Final rule.

SUMMARY: On December 21, 2000, the President signed into law Public Law 106–553, the Federal Funding Act for Fiscal Year 2001. Title X of Pub. L. 106–553, entitled the Launching our Communities' Access to Local Television Act of 2000 (''LOCAL TV Act'' or ''Act'') established the LOCAL Television Loan Guarantee Board (''Board''). The Board is authorized to guarantee loans to facilitate access, on a technologically neutral basis, to signals of local television stations for households located in nonserved or underserved areas. By this action, the Board is publishing its rules of procedure.

EFFECTIVE DATE: December 11, 2002.

FOR FURTHER INFORMATION CONTACT: Jacqueline G. Rosier, Secretary, LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW, Stop 1541, Room 2919–S, Washington, DC 20250–1541. Telephone: 202–720–0530; FAX: 202–720–2734; E-Mail: *jrosier@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law Public Law 106–553, the Federal Funding Act for Fiscal Year 2001. Title X of Pub. L. 106–553, the LOCAL TV Act, established the Board. The Board is authorized to guarantee loans to facilitate access, on a technologically neutral basis, to signals of local television stations for households located in nonserved or underserved areas. The Board is comprised of the Chairman of the Board of the Federal Reserve System, and the Secretaries of Commerce, Agriculture, and the Treasury, or their designees. The Act states that an individual may be designated a member of the Board only if the individual is an officer of the United States pursuant to an appointment by the President, by and with the advice and consent of the Senate. Individuals have been designated as Board members for each of the agencies represented on the Board. The LOCAL TV Act does not, however, designate a chair of the Board.

The regulations promulgated by this action establish procedural rules of the Board. The Board adopted these regulations at its first meeting.

These procedural rules have several key components. Because the Act does not designate a chair, these procedures require that, at the first meeting of the Board, a chair be named. This has occurred, with the designee of the Department of the Treasury unanimously named as chair. The procedural rules require that all decisions and determinations of the Board be made by an affirmative vote of not less than three members of the Board. The procedural rules require the Board to appoint a Secretary, who will be responsible for sending notice of all meetings, preparing minutes of all meetings, maintaining a complete record of all votes and actions taken by the Board, and publishing documents in the **Federal Register** upon approval of the Board. Finally, these procedural rules make clear that all communication with the Board by any party or parties interested in any matter pending before the Board shall be conducted through staff. Moreover, these rules provide that any communication between such a parties and a member of the Board will be a matter of public record.

This rule relates to agency organization, procedure, and practices, and therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required. In addition, because no notice of proposed rule making is required pursuant to 5 U.S.C. 553, or any other law, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Further, it has been determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

List of Subjects in 7 CFR Part 2200

Loan programs—Communications, Rural areas, Telecommunications, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, chapter XX of title 7 of the Code of Federal Regulations is established to read as follows:

CHAPTER XX—LOCAL TELEVISION LOAN GUARANTEE BOARD

PART 2200—LOCAL TELEVISION LOAN GUARANTEE BOARD PROCEDURES

Sec.
2200.1 Definitions.
2200.2 Purpose and scope.
2200.3 Composition of the Board.
2200.4 Authorities of the Board.
2200.5 Offices.
2200.6 Meetings and actions of the Board.
2200.7 Officer and staff responsibilities.
2200.8 Ex parte communications.
2200.9 Amendments.
2200.10 [Reserved]

Authority: 47 U.S.C. 1101 *et seq.*; Pub. L. 106–553; Pub. L.107–171.

§ 2200.1 Definitions.

(a) *Act* means the Launching Our Communities' Access to Local Television Act of 2000, Title X of Public Law 106–553, 114 Stat. 2762A–128.

(b) *Administrator* means the Administrator of the Rural Utilities Service of the United States Department of Agriculture.

(c) *Board* means the Launching Our Communities' Access to Local (LOCAL) Television Loan Guarantee Board.

§ 2200.2 Purpose and scope.

This part is issued by the Board pursuant to Section 1004 of the Act. This part describes the Board's organizational structure and the means and rules by which the Board takes actions.

§ 2200.3 Composition of the Board.

The Board consists of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Secretary of Agriculture, and the Secretary of Commerce, or their respective designees. An individual may be designated a member of the Board only if the individual is an officer of the United States pursuant to an appointment by the President, by and with the advice and consent of the Senate.

§ 2200.4 Authority of the Board.

The Board is authorized to guarantee loans in accordance with the provisions of the Act and procedures, rules, and regulations established by the Board; to make the determinations authorized by the Act; and to take such other actions as are necessary to carry out its functions in accordance with the Act.

§ 2200.5 Offices.

The principal offices of the Board are at the U.S. Department of Agriculture, Rural Utilities Service, Room 2919–S, Stop 1541; 1400 Independence Ave., SW.; Washington, DC 20256–1590.

§ 2200.6 Meetings and actions of the Board.

(a) *Chair.* At its initial meeting, the Board shall select a Chair by an affirmative vote of not less than three members of the Board.

(b) *Place and frequency.* The Board meets, on the call of the Chair, in order to consider matters requiring action by the Board. Time and place for any such meeting shall be determined by the members of the Board.

(c) *Quorum and voting.* Three voting members of the Board constitute a quorum for the transaction of business. All decisions and determinations of the Board shall be made by an affirmative vote of not less than three members of the Board. All votes on determinations of the Board required by the Act shall be recorded in the minutes. A Board member may request that any vote be recorded according to individual Board members.

(d) *Agenda of meetings.* To the extent practicable, an agenda for each meeting shall be distributed to members of the Board at least two days in advance of the date of the meeting, together with copies of materials relevant to the agenda items.

(e) *Minutes.* The Secretary shall keep minutes of each Board meeting and of action taken without a meeting, a draft of which is to be distributed to each member of the Board as soon as practicable after each meeting or action. To the extent practicable, the minutes of a Board meeting shall be corrected and approved at the next meeting of the Board.

(f) *Use of conference call communications equipment.* Any member may participate in a meeting of the Board through the use of conference call, telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak to and hear each other. Any member so participating in a meeting shall be deemed present for all purposes. Actions taken by the Board at meetings conducted through the use of such equipment, including the votes of each member, shall be recorded in the usual manner in the minutes of the meetings of the Board.

(g) *Actions between meetings.* When, in the judgment of the Chair, circumstances occur making it desirable for the Board to consider action when it is not feasible to call a meeting, the relevant information and recommendations for action may be transmitted to the members by the Secretary and the voting members may communicate their votes to the Chair in writing (including an action signed in counterpart by each Board member), electronically, or orally (including telephone communication). Any action taken under this paragraph has the same effect as an action taken at a meeting. Any such action shall be recorded in the minutes.

(h) *Officers and staff of the Board.* The Board shall appoint a Secretary and may appoint such other officers and staff as it deems appropriate, including an Executive Director and a Legal Counsel. An individual may hold more than one officer or staff position.

(i) *Delegations of authority.* The Board may delegate authority, subject to such terms and conditions as the Board deems appropriate, to officers and staff to take certain actions not required by the Act to be taken by the Board. All delegations shall be made pursuant to resolutions of the Board and recorded in writing, whether in the minutes of a meeting or otherwise. Any action taken pursuant to such delegated authority has the effect of an action taken by the Board.

§ 2200.7 Officer and staff responsibilities.

(a) *Executive Director.* The Executive Director advises and assists the Board in carrying out its responsibilities under the Act, provides general direction with respect to the administration of the Board's actions, directs the activities of the staff, and performs such other duties as the Board may require.

(b) *Legal Counsel.* The Legal Counsel provides legal advice relating to the responsibilities of the Board and performs such other duties as the Board may require.

(c) *Secretary.* The Secretary sends notice of all meetings, prepares minutes of all meetings, maintains a complete record of all votes and actions taken by the Board, has custody of all records of the Board, has authority to publish documents in the **Federal Register** upon approval of the Board and performs such other duties as the Board may require.

(d) *Other.* The responsibilities of any other officer or staff shall be defined by the Board at the time of appointment of such position.

§ 2200.8 Ex parte communications.

Communication with the Board shall be conducted through the staff of the Board. Oral or written communication, not on the public record, between the Board, or any member of the Board, and any party or parties interested in any matter pending before the Board concerning the substance of that matter is prohibited.

§ 2200.9 Amendments.

The Board's rules may be adopted or amended, or new rules may be adopted, only by the affirmative vote of not less than three members of the Board. Authority to adopt or amend these rules may not be delegated.

§ 2200.10 [Reserved]

Dated: October 31, 2002.

Jacqueline Rosier,

Secretary, LOCAL Television Loan Guarantee Board.

[FR Doc. 02–31055 Filed 12–10–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–33–AD; Amendment 39–12978; AD 2002–25–03]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN–2A and BN2A Mk. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 97–14–01, which currently applies to all Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN–2A and BN2A Mk. III series airplanes. AD 97–14–01 requires repetitively inspecting the left-hand rudder bar assembly for cracks, measuring the slider tube unit wall thickness, and modifying the rudder bar assembly by installing a slider tube unit of improved design as a terminating action for the repetitive inspections. AD 97–14–01 resulted from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. Reports of cracks being found on the

right-hand rudder bar assembly and the inadvertent omission of requiring inspection of the rudder pedal beams prompted this action. This AD retains the requirements of AD 97–14–01 and requires inspections of the right-hand rudder bar assembly and each rudder pedal beam. The actions specified by this AD are intended to prevent failure of the pilot's and co-pilot's rudder bar assemblies, which could result in loss of control of the airplane during landing operations.

DATES: This AD becomes effective on January 31, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 31, 2003.

ADDRESSES: You may get the service information referenced in this AD from B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–33–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action to This Point?

Reports of failure of the pilot's rudder bar caused FAA to issue AD 97–14–01 on all Pilatus Britten-Norman BN–2A and BN2A Mk. III series airplanes. Fractures of the central pillar/slider tube adjacent to the welded transverse lugs caused the pilot's rudder bar to fail. AD 97–14–01, Amendment 39–10058 (62 FR 35670, July 2, 1997), currently requires the following:

—Repetitively inspecting the left-hand rudder bar assembly for cracks;
—Measuring the slider tube unit wall thickness; and
—Modifying the rudder bar assembly by installing a slider tube unit of improved design as a terminating action for the repetitive inspections.

What Events Have Happened Since AD 97–14–01 To Cause This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA of the need to change AD 97–14–01. The CAA reports that fractures in the central pillar/slider tube adjacent to the welded transverse lugs have been found on the co-pilot's (or dual) rudder bar assembly. These reports prompted a need to require inspections of the right-hand rudder bar assembly in addition to the left-hand rudder bar assembly. We also realized we inadvertently omitted from AD 97–14–01 repetitive inspections of the rudder pedal beam as specified in Britten-Norman Service Bulletin No. BN–2/SB. 56, Issue 2, dated February 13, 1978.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in failure of the pilot's and co-pilot's rudder bar assemblies. Such failure could result in loss of control of the airplane during landing operations.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Britten-Norman BN–2A and BN2A Mk. III series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 18, 2002 (67 FR 58734). The NPRM proposed to supersede AD 97–14–01 with a new AD that would retain the actions of AD 97–14–01 and require inspections of the right-hand (co-pilot's) rudder bar assembly and the rudder pedal beams.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

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

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 113 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
6 workhours × $60 = $360	No parts required	$360	$360 × 113 = $40,680.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
10 workhours × $60 = $600	$1,300	$600 + $1,300 = $1,900.

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is based on number of landings rather than hours time-in-service (TIS).

Why Is the Compliance Time Presented in Landings Instead of Hours Time-in-Service?

The reason for this type of compliance is that the area that is showing fatigue is the pilot's and co-pilot's rudder bar assemblies and pillar/slider tube unit. This area of the airplane is used during the landing operation. Furthermore, the stress and fatigue is greater in the thinner gauged metal slider tube unit upon landing. We will use the number of landings as the compliance time for this AD.

Since airplane operators are not required to keep track of landings, we will provide a method of calculating hours TIS into landings.

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 97–14–01, Amendment 39–10058 (62 FR 35670, July 2, 1997), and by adding a new AD to read as follows:

2002–25–03 Pilatus Britten-Norman Limited: Amendment 39–12978; Docket No. 2002–CE–33–AD; Supersedes AD 97–14–01, Amendment 39–10058.

(a) *What airplanes are affected by this AD?* This AD affects the Models BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the pilot's and co-pilot's rudder bar assemblies, which could result in loss of control of the airplane during landing operations.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

(1) *Right-hand and left-hand slider tube and vertical pillar of the rudder bar.* Within 500 landings after the last inspection required by AD 97–14–01 or the next 100 landings after January 31, 2003 (the effective date of this AD), whichever occurs later, inspect (visually and using a dye penetrant method) the left-hand and right-hand slider tube and vertical pillar of the rudder bar unit for cracks and measure the slider tube wall to determine thickness. Accomplish this inspection and follow-up actions below in accordance with the instructions specified in B–N Group Ltd. Service Bulletin Number SB 111, Issue 2, dated April 1, 2002 (Part of this accomplishment is the incorporation of Britten-Norman Service Bulletin No. BN–2/SB. 56, Issue 2, dated February 13, 1978; and Britten-Norman Service Bulletin No. BN–2/SB. 111, Issue 1, dated October 25, 1977):

If	Then	When
(i) No cracks are found during the inspection required in paragraph (d)(1) of this AD and the slider tube wall thickness is 0.056-inch (17 s.w.g.):	Repetitively inspect the left-hand and right-hand slider tube and vertical pillar of the rudder bar unit and install Modification NB/M/948, part number (P/N) NB–45–A1–2975 or FAA-approved equivalent part number, on the left-hand and right-hand slider tube and vertical pillar of the rudder bar unit. When this modification is incorporated, the repetitive inspections in that area may be terminated.	Repetitively inspect at intervals not to exceed 500 landings after the initial inspection required in paragraph (d)(1) of this AD. Incorporate the modification upon the accumulation of 5,000 landings after August 18, 1997 (the effective date of AD 97–14–01) or within the next 500 landings after January 31, 2003 (the effective date of this AD), whichever occurs later (unless any crack(s) is/are found during an inspection).
(ii) No cracks are found during the inspection required in paragraph (d)(1) of this AD and the slider tube wall thickness is 0.036-inch (20 s.w.g.):	Repetitively inspect the left-hand and right-hand slider tube and vertical pillar paragraph of the rudder bar unit and install Modification NB/M/948, part number (P/N) NB–45–A1–2975 or FAA-approved equivalent part number, on the left-hand and right-hand slider tube and vertical pillar of the rudder bar unit. When this modification is incorporated, the repetitive inspections in that area may be terminated.	Repetitively inspect at intervals not to exceed 250 landings after the initial inspection. Incorporate the modification upon the accumulation of 2,500 landings after August 18, 1997 (the effective date of AD 97–14–01) or within the next 250 landings after January 31, 2003 (the effective date of this AD), whichever occurs later (unless any crack(s) is/are found during an inspection).

If	Then	When
(iii) If any crack(s) is/are found during any inspection on the left-hand or right-hand slider tube and vertical pillar of the rudder bar unit:	Install Modification NB/M/948, P/N NB–45–A1–2975 or FAA-approved equivalent part number, on the cracked slider tube and vertical pillar of the rudder bar unit. When this modification is incorporated, the repetitive inspections in that area may be terminated.	Prior to further flight after the inspection where the crack(s) is/are found.

(2) As of January 31, 2003 (the effective date of this AD), only install rudder bar assemblies that incorporate Modification NB/M/948.

(3) *Rudder pedal beams.* Accomplish the following on the rudder pedal beams:

Action	Compliance	Procedures
(i) Inspect (visually and using a dye penetrant inspection method) each rudder pedal beam for cracks and replace any cracked beam with a P/N NB–45–C–2153 (Post Mod No. BB/M/341) rudder pedal beam.	Inspect within the next 100 landings after January 31, 2003 (the effective date of this AD) and thereafter at intervals not to exceed 500 landings. Replace prior to further flight after the inspection where any crack(s) is/are found. Continue with repetitive inspection intervals.	In accordance with Britten-Norman Service Bulletin No. BN–2/SB. 56, Issue 2, dated February 13, 1978.
(ii) Only install P/N NB–45–C–2153 (Post Mod No. BB/M/341) rudder pedal beams.	As of January 31, 2003 (the effective date of this AD).	Not Applicable.

Note 1: If operators have not recorded the number of landings, the landings can be calculated by multiplying 3 landings per 1 hour TIS.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

(2) Alternative methods of compliance approved in accordance with AD 97–14–01, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, 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 (e) 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with B–N Group Ltd. Service Bulletin Number SB 111, Issue 2, dated April 1, 2002; and Britten-Norman Service Bulletin No. BN–2/SB. 56, Issue 2, dated February 13, 1978. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 97–14–01, Amendment 39–10058.

Note 3: The subject of this AD is addressed in B–N Group Ltd. Service Bulletin Number SB 111, Issue 2, dated April 1, 2002. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

(j) *When does this amendment become effective?* This amendment becomes effective on January 31, 2003.

Issued in Kansas City, Missouri, on December 2, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31128 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–50–AD; Amendment 39–12975; AD 2002–22–51]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2002–22–51, which was sent previously to all known U.S. owners and operators of MD Helicopters, Inc. (MDHI) Model MD900 helicopters by individual letters. This AD requires, before further flight, certain procedures and inspections of the main rotor support static mast (mast) and the mast threads for any crack or pitting. If any crack or pitting is found, this AD requires removing the mast from service. The actions specified by this AD are intended to detect any crack or pitting in the mast that could result in failure of the mast, separation of the main rotor, and subsequent loss of control of the helicopter.

DATES: Effective December 26, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–22–51, issued on October 23, 2002, which

contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–50–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On October 23, 2002, the FAA issued Emergency AD 2002–22–51 for the specified MDHI model helicopters, which requires, before further flight, removing the main rotor drive shaft to inspect the mast, removing the main rotor hub assembly to inspect the mast threads, and if a flaw is found in the mast threads, magnetic particle inspecting the mast threads for any crack or pitting. If any crack or pitting is found, the AD requires removing the mast from service. The cause of the cracking is under investigation, but preliminary analysis shows that lack of torque in the 12 bolts on the main rotor hub retention nut (nut) results in loss of preload in the mast. Without preload, the mast will incur alternating stresses that can lead to crack initiation. In the four reported cases, cracks were found in the mast less than 1 inch from the top. In at least one case, pitting was also found in this area. All of these cracks penetrated through the wall thickness. This condition, if not detected, can result in failure of the mast, separation of the main rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed MDHI Service Bulletin No. SB900–089R1, dated October 22, 2002, which describes procedures for checking the torque in the 12 bolts of the nut, inspecting the mast for a crack, and removing the mast from service if necessary.

Since the unsafe condition described is likely to exist or develop on other specified helicopters of the same type design, the FAA issued Emergency AD 2002–22–51 to detect any crack or pitting that could result in failure of the mast, separation of the main rotor, and subsequent loss of control of the helicopter. The AD requires, before further flight, for MDHI Model MD900 helicopters, serial numbers 900–00008 through 900–00110, with mast, part number 900F2401021–101, removing the main rotor drive shaft and inspecting the mast for any crack or pitting. The AD also requires removing the main rotor hub assembly and inspecting the mast threads for a crack. If a flaw is found in the thread root area and you cannot determine if it is a crack, the AD also requires a magnetic particle inspection (wet fluorescent) for a crack. If any crack or pitting is found, the AD requires removing the mast from service.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, conducting the specified inspections of the mast and mast threads for any crack or pitting are required, and removing the mast from service if any crack or pitting is found in any of the inspections is required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 23, 2002, to all known U.S. owners and operators of MDHI Model MD900 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that this AD will affect 32 helicopters of U.S. registry, that it will take approximately 6 work hours to inspect and 8 work hours to replace a mast, and that the average labor rate is $60 per work hour. Required parts will cost approximately $45,000 per helicopter to replace a mast. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $193,440, assuming that the inspections are performed on each helicopter and that the mast is replaced on 4 helicopters.

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 should 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.

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 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 mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002–SW–50–AD.'' The postcard will be date stamped and returned to the commenter.

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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–22–51 MD Helicopters, Inc.: Amendment 39–12975. Docket No. 2002–SW–50–AD.

Applicability: MD–900 helicopters, serial numbers 900–00008 through 900–00110, with a main rotor support static mast (mast), part number 900F2401021–101, installed, certificated in any category.

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

Compliance: Required before further flight, unless accomplished previously.

To detect cracks and pitting in the mast that could result in failure of the mast, separation of the main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the main rotor drive shaft.

Note 2: MD Helicopters, Inc. Service Bulletin No. SB900–089R1, dated October 22, 2002, pertains to the subject of this AD and has a Figure 1 depicting the inspection areas of the mast.

(b) Remove 1 inch of primer from the top inside diameter of the mast. During paint removal, wipe the area clean. Do not scrub or flush the area. Do not allow paint stripper to run down the inside or outside surfaces of the mast below the work area or enter into the transmission. Inspect the top 1 inch of the inside diameter of the mast for a crack or pitting using a bright light and a 10x or higher magnifying glass. If you find any crack or pitting, remove the mast from service.

(c) Remove the main rotor hub assembly. Clean the threads of the mast thoroughly with solvent. Inspect the mast threads for a crack using a bright light and a 20x or higher magnifying glass. Pay particular attention to the thread root area. If you see a flaw in the thread area and cannot determine if it is a crack, perform a magnetic particle inspection (wet fluorescent) per ASTM E 1444–01 using an electromagnetic yoke or coil. If you find any crack or pitting, remove the mast from service.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

(e) Special flight permits will not be issued.

(f) This amendment becomes effective on December 26, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–22–51, issued October 23, 2002, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on November 25, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–31176 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–35–AD; Amendment 39–12953; AD 2002–23–09]

RIN 2120–AA64

Airworthiness Directives; MT–Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C Propellers; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–23–09 applicable to MT–Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C propellers that was published in the **Federal Register** on November 25, 2002 (67 FR 70532). The AD number listed in the amendatory language of the regulatory information is incorrect. This document corrects that number. In all other respects, the original document remains the same.

EFFECTIVE DATE: December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzetti, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7156, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc, 02–29354 applicable to MT–Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C propellers that was published in the **Federal Register** on November 25, 2002 (67 FR 70532). The following correction is needed:

§ 39.13 [Corrected]

On page 70532, in the third column, in the Amendatory Language, in the fifth paragraph, remove the AD number ''2002–2–23–09'' and add in its place ''2002–23–09''.

Issued in Burlington, MA, on December 4, 2002.

Francis A. Favara,

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

[FR Doc. 02–31174 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–13–AD; Amendment 39–12946; AD 2002–23–02]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–8C1 Turbofan Engines, Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–23–09 applicable to General Electric Company CF34–8C1 turbofan engines that was published in the **Federal Register** on November 20, 2002 (67 FR 70004). Table 801 was incorrectly numbered in three locations in the AD. This document corrects that number. In all other respects, the original document remains the same.

EFFECTIVE DATE: December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA

01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc, 02–29355 applicable to General Electric Company CF34–8C1 turbofan engines was published in the **Federal Register** on November 20, 2002 (67 FR 70004). The following correction is needed:

§ 39.13 [Corrected]

On page 70005, in the first column, in the Comments Section, in the fourth paragraph, in the eighth and again in the thirteenth lines, ''Table 805'' is corrected to read ''Table 801''. Also on page 70005, in the third column in the ninth paragraph, ''Table 805'' is corrected to read ''Table 801''.

Dated: Issued in Burlington, MA, on December 4, 2002.

Francis A. Favara,

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

[FR Doc. 02–31173 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–13–P

BROADCASTING BOARD OF GOVERNORS

22 CFR Part 507

Sunshine Act Meetings

AGENCY: The Broadcasting Board of Governors.

ACTION: Final rule.

SUMMARY: This regulation establishes rules for implementing open meetings under the Sunshine Act for the Broadcasting Board of Governors (BBG or Agency).

EFFECTIVE DATE: December 11, 2002.

FOR FURTHER INFORMATION CONTACT: Carol M. Booker, Legal Counsel, at (202) 401–3736.

SUPPLEMENTARY INFORMATION: Public Law 103–236, the United States Broadcasting Act of 1994, created the BBG within the United States Information Agency (USIA). By law, the bipartisan board consisted of nine members—eight members who were appointed by the President, by and with the advice and consent of the Senate, and the USIA Director.

On October 21, 1998, President Clinton signed Pub. L. 105–277, the Omnibus Consolidated Emergency Supplemental Appropriations Act for Fiscal Year 1999. Contained as Division G of this legislation was the Foreign Affairs Reform and Restructuring Act of 1998, which reorganized the foreign affairs agencies of the U.S. Government. Under this reorganization, the Broadcasting Board of Governors became an independent Federal entity on October 1, 1999. Under the reorganization of the foreign affairs agencies, the responsibilities of the Board remained intact, and the membership of the Board remained the same, except that the USIA Director was replaced by the Secretary of State.

The BBG has responsibility for oversight of all United States sponsored, non-military broadcasting to foreign countries. The BBG oversees the operations of the International Broadcasting Bureau (IBB), which includes the worldwide broadcasting services of the Voice of America (VOA), WORLDNET, the Office of Cuba Broadcasting (OCB), Engineering and Technical Operations. The BBG also oversees two grantee organizations, Radio Free Europe/Radio Liberty (RFE/RL) and Radio Free Asia (RFA). The Board members also serve as the members of the Board of Directors of both RFE/RL and RFA.

The Board's authorities include, among others:

- To review and evaluate the mission and operation of, and assess the quality, effectiveness, and professional integrity of, all such activities within the broad foreign policy objectives of the United States;
- To make and supervise grants for broadcasting and related activities of RFE/RL and RFA;
- To review, evaluate and determine, at least annually, the addition or deletion of language services; and
- To allocate funds appropriated for international broadcasting activities among the various elements of the IBB and grantees, subject to reprogramming notification.

In total, the BBG broadcasting entities transmit more than 2,000 hours of weekly programming in 61 languages to more than 100 million weekly listeners worldwide.

The Sunshine Act (5 U.S.C. 552b) is a Federal Law that requires meetings of Federal Agencies to remain public and in most cases the time, place and subject matter of the meeting should be announced prior to its occurrence.

In accordance with 5 U.S.C. 605(b), the BBG certifies that the rules do not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered significant regulatory action within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Dated: December 3, 2002.

Carol M. Booker,

Legal Counsel, Broadcasting Board of Governors.

List of Subjects in 22 CFR Part 507

Sunshine Act.

Accordingly, for the reasons set out in the preamble, 22 CFR Part 507 is added to read as follows:

PART 507—RULES FOR IMPLEMENTING OPEN MEETINGS UNDER THE SUNSHINE ACT FOR THE BROADCASTING BOARD OF GOVERNORS

Sec.

507.1 General policies.
507.2 Definitions.
507.3 Requirement for open meetings.
507.4 Grounds on which meetings may be closed.
507.5 Procedures for announcing meetings.
507.6 Procedures for closing meetings.
507.7 Reconsideration of opening or closing a meeting.
507.8 Recording keeping of closed meetings.

Authority: Pub. L. 93–129, 87 Stat. 956, 5 U.S.C. 552b.

§ 507.1 General policies.

The Broadcasting Board of Governors will provide the public with the fullest practical information regarding its decision making process while protecting the rights of individuals and its abilities to carry out its responsibilities.

§ 507.2 Definitions.

The following definitions apply:

(a) The term agency includes any establishment in the executive branch of the government headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency. The Broadcasting Board of Governors is a government agency headed by a nine-member board, eight of whom are appointed by the President with the advice and consent of the Senate, and the ninth being the Secretary of State. Therefore, the Broadcasting Board of Governors is an ''agency'' under these terms.

(b) The term meeting means the deliberation of this Board where such deliberations determine or result in the joint conduct or disposition of official Board business.

(c) The term member means an individual who belongs to the Board who has been appointed by the President and confirmed by the Senate or is the Secretary of State.

§ 507.3 Requirement for open meetings.

Members shall not jointly conduct or dispose of agency business other than in accordance with this part. Except as provided in § 507.4 every portion of every meeting of the agency shall be open to public observation.

§ 507.4 Grounds on which meetings may be closed.

The Board shall open every portion of every meeting of the agency for public observation except where the agency determines that such portion or portions of the meeting or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practice of the agency;

(c) Disclose matters specifically exempted from disclosure by statute: Provided, that such statute:

(1) Requires that the matters be withheld from the public in such manner as to leave no discretion on the issue, or

(2) Established practical criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial on an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. This shall not apply in any instance where the Board has already disclosed to the public the content or the nature of its proposed action, or where the Board is required by law to make such disclosures on its own initiative prior to taking final Board action on such proposal; or

(i) Specifically concern the Board's issuance of a subpoena, or the Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Board of a particular case of formal agency adjudication, or otherwise involving a determination on the record after opportunity for a hearing.

§ 507.5 Procedures for announcing meetings.

(a) In the case of each meeting, the Board shall make public, at least one week before the meeting, the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the Board determine by a recorded vote that such meeting must be called at an earlier date, in which case the Board shall make public announcement of the time, place, subject matter of such meeting and whether it is open or closed to the public, at the earliest practical time.

(b) Immediately following the public announcement, the Board will publish it in the **Federal Register**.

§ 507.6 Procedures for closing meetings.

(a) The closing of a meeting shall occur only when:

(1) A majority of the membership of the Board votes to take such action. A separate vote of the Board members shall be taken with respect to each Board meeting, a portion or portions of which are proposed to be closed to the public pursuant to § 507.4, or with respect to any information which is proposed to be withheld under § 507.4. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held not more than thirty days after the initial meeting in such series. The vote of each Board member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interest may be directly affected by a portion of the meeting requests that the Board close such a portion to the public for any of the reasons referred to in § 507.4 (e), (f) or (g), the Board, upon request of any of its Board members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken, the Board shall make publicly available a written copy of such vote reflecting the vote of each member on the question and full written explanation of its action closing the entire or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation.

(c) The Board shall announce the time, place and subject matter of the meeting at least eight (8) days before the meeting.

(d) For every closed meeting, the Board's Legal Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Board.

§ 507.7 Reconsideration of opening or closing a meeting.

The time or place of a Board meeting may be changed following the public announcement only if the Board publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or a portion of a meeting, to the public, may be changed following the public announcement only if a majority of the Board members determines by a recorded vote that Board business so requires and that no earlier announcement of the change was possible, and the Board publicly announces such change and the vote of each member upon such change at the earliest practicable time.

§ 507.8 Recording keeping of closed meetings.

(a) The Board shall maintain an electronic recording of the proceedings of each meeting, or portion of a meeting, closed to the public.

(b) The Board, after review by the Chairman, shall make promptly

available to the public in a place easily accessible to the public, a complete transcript or electronic record of the discussion of any item on the agenda, or any item of testimony of any witness received at the Board meeting, except for such item or items of such discussion or testimony as the Board determines to contain information which may be withheld under § 507.4. Copies of such record, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication. The Board shall maintain a complete transcript or electronic copy of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion was held, whichever occurs later.

[FR Doc. 02–31168 Filed 12–10–02; 8:45 am]

BILLING CODE 8610–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–027]

RIN 2115–AE47

Drawbridge Operation Regulation; Mississippi River, Clinton, IA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Commander, Eighth Coast Guard District, is temporarily changing the regulation governing the Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River. From 7:30 a.m., December 15, 2002, until 7:30 a.m., March 1, 2003, the drawbridge shall open on signal if at least 24 hours advance notice is given. This temporary rule is issued to facilitate annual maintenance and repair on the bridge.

DATES: This temporary rule is effective 7:30 a.m. on December 15, 2002, to 7:30 a.m. on March 1, 2003.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 2378. Commander, Eighth Coast Guard District (obr) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

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. This rule is being promulgated without an NPRM due to the short time frame between the submission of the request by the Union Pacific Railroad Company and the date of requested closure. This rule would not become effective in time to begin repair work on the drawbridge if an NPRM were published, thus defeating the purpose of this rule.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the short time frame between the submission of the request by the Union Pacific Railroad Company and the date of the requested closure, this rule could not be published more than 30 prior to its effective date. If there were a 30 day delay in its publication, this rule would not become effective in time to begin repair work on the drawbridge which would defeat the purpose of this rule.

Background and Purpose

On September 20, 2002, the Union Pacific Railroad Company requested a temporary change to the operation of the Clinton Railroad Swing Bridge across the Upper Mississippi River, Mile 518.0 at Clinton, Iowa. Union Pacific Railroad Company requested that 24 hours advance notice be required to open the bridge during the maintenance period. The maintenance is necessary to ensure the continued safe operation of the drawbridge. Advance notice may be given by calling the Clinton Yardmaster's office at (319) 244–3204 at anytime; or (319) 244–3269 weekdays between 7 a.m. and 3:30 p.m.; or Mr. Tomaz Gawronski, office (515) 263–4536 or cell phone (515) 229–2793.

The Clinton Railroad Drawbridge navigation span has a vertical clearance of 18.7 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw opens on signal for passage of river traffic. The Union Pacific Railroad Company requested the drawbridge be permitted to remain closed to navigation from 7:30 a.m., December 15, 2002, until 7:30 a.m., March 1, 2003 unless 24 hours advance notice is given to open the drawbridge to allow time to make repairs. The Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River, is located upstream from Lock 17. Winter freezing of the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 17 (Mile 437.0 UMR) and Lock No. 19 (Mile 364.1 UMR) until 7:30 a.m. March 1, 2002 will reduce any significant navigation demands for the drawspan opening. Performing maintenance on the bridge during the winter when the number of vessels likely to be impacted is minimal is preferred to restricting vessel traffic during the commercial navigation season. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators. No objections to the proposed temporary rule were raised.

Regulatory Evaluation

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

Because vessel traffic in the area of Clinton, Iowa will be greatly reduced by winter icing of the Upper Mississippi River and the closure of Locks 17 and 19, it is expected that this rule will have minimal economic or budgetary effects on the local community.

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 will not have a significant economic impact on a substantial number of small entities.

The temporary rule will have a negligible impact on vessel traffic. The primary users of the Upper Mississippi

River in Clinton, Iowa are commercial towboat operators. With the onset of winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineers' Lock No. 17 (Mile 437.0 UMR) and Lock No. 19 (Mile 364.1 UMR) until March 1, 2003 and Lock No. 24 (Mile 273.4 UMR) until March 15, 2003, there will be few, if any, significant navigation demands for the drawspan opening. In order to obtain a bridge opening, an advance notice of 24-hours is required. This requirement has been coordinated with local fleeting-harbor owners, the railroad, and navigation interests in the area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

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 contains no new collection-of-information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial 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

The Coast Guard 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. Promulgation of changes to drawbridge regulations has been found not to have significant effect on the human 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 is amending Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From 7:30 a.m., December 15, 2002, through 7:30 a.m., March 1, 2003, § 117.T408 is added to read as follows:

§ 117.T408 Upper Mississippi River.

Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River.

From 7:30 a.m., December 15, 2002 through 7:30 a.m., March 1, 2003, the drawspan requires 24 hours advance notice for bridge operation. Bridge opening requests must be made 24 hours in advance by calling Clinton Yardmaster's office at (319) 244–3204 at anytime; or (319) 244–3269 weekdays between 7 a.m. and 3:30 p.m.; or Mr. Tomaz Gawronski, office (515) 263–4536 or cell phone (515) 229–2793.

Dated: November 22, 2002.

Roy J. Casto,

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

[FR Doc. 02–31219 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–141]

Drawbridge Operation Regulations: Cape Cod Canal, MA

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 that govern the Conrail Railroad Bridge across Cape Cod Canal, mile 0.7, at Bourne, Massachusetts. This temporary deviation will allow the bridge to remain closed at 60 feet above mean high water from 8 a.m. through 5 p.m., on December 10, 11, 18, and 19, 2002. This temporary deviation is necessary to facilitate vital unscheduled mechanical repairs at the bridge.

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

ADDRESSES: Materials referred to in this document 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 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this temporary deviation.

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

SUPPLEMENTARY INFORMATION: The vertical clearance under the Conrail Railroad Bridge in the open position is 135 feet at mean high water and 139 feet at mean low water. The draw is normally in the fully open position except for the passage of rail traffic. The existing regulations are listed at 33 CFR § 117.589.

The owner of the bridge, the Army Corps of Engineers (ACOE), requested a temporary deviation from the Drawbridge Operation Regulations to facilitate vital unscheduled maintenance, the replacement of the counterweight guide shoes, at the bridge. This work must be performed without delay to ensure continued safe reliable operation of the bridge.

The bridge owner advised the mariners who normally use this waterway about the necessary emergency repairs at the bridge and the temporary closures that will be required in order to facilitate the necessary repairs. No objections were received.

Under this temporary deviation the Conrail Railroad Bridge, mile 0.7, across the Cape Cod Canal, may remain closed at 60 feet above mean high water from 8 a.m. through 5 p.m. on December 10, 11, 18, and 19, 2002.

Thirty days notice to the Coast Guard for approval of this bridge maintenance was not given by the bridge owner and was not required because this work involves vital, unscheduled maintenance that must be performed without undue delay.

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: December 3, 2002.

V.S. Crea,

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

[FR Doc. 02–31220 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No.VI3–1, FRL–7420–4]

Approval and Promulgation of State Plans for Designated Facilities; Virgin Islands

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Government of the United States (US) Virgin Islands. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing small municipal waste combustion (MWC) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing small MWC units in the state and if it submits a negative declaration letter in place of the State Plan.

DATES: This direct final rule is effective on February 10, 2003, without further notice, unless EPA receives adverse comment by January 10, 2003.

If an adverse comment is received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

A copy of the Virgin Islands submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637–4249. Alternatively, appointments may be arranged via e-mail by sending a message to Demian P. Ellis at *ellis.demian@epa.gov.* The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007–1866.

A copy of the Virgin Islands submittal is also available for inspection at the following locations:

Virgin Islands Department of Planning and Natural Resources, Division of Environmental Protection, Cyril E. King Airport, Terminal Building, 2nd Floor, St. Thomas, USVI, 00802.

FOR FURTHER INFORMATION CONTACT: Demian P. Ellis, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, Telephone, (212) 637–4249.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

Table of Contents

A. What action is EPA taking today?
B. Why is EPA approving the Virgin Islands' negative declaration?
C. What if an existing small MWC unit is discovered after today's action becomes effective?
D. What is the background for today's action?
E. What are EPA requirements for small MWC units?
F. Who must comply with the requirements?
G. What are EPA's conclusions?
H. Administrative requirements

A. What Action Is EPA Taking Today?

The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Government of the United States Virgin Islands (Virgin Islands) dated July 17, 2002. This negative declaration finds that there are no existing small municipal waste combustors throughout the Territory of the Virgin Islands. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled ''Emission Guidelines for Existing Small Municipal Waste Combustion Units'' (65 FR 76378, December 6, 2000). The negative declaration officially certifies to EPA

that, to the best of the Virgin Islands' knowledge, there are no small MWC units in operation within the Territory.

B. Why Is EPA Approving the Virgin Islands' Negative Declaration?

EPA has evaluated the negative declaration submitted by the Virgin Islands for consistency with the Clean Air Act (Act), EPA guidelines and policy. EPA has determined that the Virgin Islands' negative declaration meets all applicable requirements and, therefore, EPA is approving the Virgin Islands' certification that there are no existing small MWC units in operation throughout the Territory. The Virgin Islands has certified in its negative declaration that there are no small MWC units that meet the EG criteria based on file review, inspections, and a territory-wide search.

EPA's approval of the Virgin Islands' negative declaration is based on the following:

(1) The Virgin Islands has met the requirements of § 60.23(b) in Title 40, part 60, subpart B of the *Code of Federal Regulations* (40 CFR part 60) for submittal of a letter of negative declaration that certifies there are no existing facilities within the Territory. Such certification exempts the Virgin Islands from the requirements to submit a plan.

(2) EPA's own source inventory files indicate there are no existing small MWC units operating within the Territory of the Virgin Islands. Specifically, during October 2001, EPA compiled an inventory of small MWC units as a required element of the small MWC EG and found none in the Virgin Islands.

C. What if an Existing Small MWC Unit Is Discovered in the Virgin Islands After Today's Action Becomes Effective?

Section 60.1530 of 40 CFR part 60, subpart BBBB (page 76386 at 65 FR 76378, December 6, 2000) requires that if, after the effective date of today's action, an existing small MWC unit is found within the Virgin Islands, the Federal Plan implementing the EG would automatically apply to that small MWC unit until a State Plan is approved by EPA.

The Federal Plan was proposed on June 14, 2001 (66 FR 32484) and is expected to be promulgated in the near future. The Federal Plan will apply to small MWCs in states, commonwealths, and territories (1) where the EPA inventory identifies small MWCs and a plan is required and has not been submitted and approved by EPA and (2) where the EPA inventory did not identify any small MWC and a negative declaration has been received and approved by EPA (such as the Virgin Islands) and a small MWC is subsequently identified in the State or territory. If and when a State Plan, or in this case a Territorial Plan, for small MWCs is submitted and approved, the Federal Plan would no longer apply.

D. What Is the Background for Emission Guidelines and State Plans?

Section 111(d) of the Act requires that pollutants controlled under New Source Performance Standards (NSPS) must also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EG into their body of regulations.

Under section 129 of the Act, the EG is not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become federally enforceable upon EPA approval. The procedures for adopting and submitting State Plans, as well as state requirements for a negative declaration, are in 40 CFR part 60, subpart B.

EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules (60 FR 65414).

E. Where Can You Find the EG Requirements for Small MWC Units?

On December 6, 2000, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new MWC units and the EG applicable to existing small MWC units. The NSPS and EG are codified at 40 CFR part 60, subparts AAAA (65 FR 76350) and BBBB (65 FR 76378), respectively.

F. Who Must Comply With the EG Requirements?

A small MWC unit having the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse derived fuel that commenced construction on or before August 30, 1999 (''existing small MWC unit'') must comply with these requirements. See § 60.1555 of 40 CFR part 60, subpart BBBB for a list of small MWC units exempt from the federal requirements.

G. What Are EPA's Conclusions?

EPA has determined that the Virgin Islands' negative declaration meets all the requirements and, therefore, EPA is approving the Virgin Islands' certification that no applicable small MWC units are in operation within the Territory of the U.S. Virgin Islands. If any existing small MWC units are discovered in the future, the Federal Plan implementing the EG would automatically apply to that small MWC unit until the State Plan is approved by EPA.

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 February 10, 2003, without further notice unless the Agency receives adverse comments by January 10, 2003.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

H. Administrative Requirements

tive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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.''

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this rule may have federalism implications. The only reason why this rule may have federalism implications is if in the future a small MWC unit is found within the Territory of the U.S. Virgin Islands the unit will become subject to the Federal Plan until a State Plan is approved by EPA. However, it will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this rule.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because as a negative declaration it is not subject to the small MWC EG requirements. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, commonwealth, territorial, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, commonwealth, territorial, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective February 10, 2003, unless EPA receives material adverse written comments by January 10, 2003.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

Petitions for Judicial Review

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 February 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality

of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: November 15, 2002.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

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

Authority: 62 U.S.C. 7401–7671q.

Subpart CCC—Virgin Islands

2. Part 62 is amended by adding new § 62.13355 and an undesignated heading to subpart CCC to read as follows:

Air Emissions From Existing Small Municipal Waste Combustion Units With the Capacity To Combust at Least 35 Tons per Day but No More Than 250 Tons per Day of Municipal Solid Waste or Refuse Derived Fuel and Constructed on or Before August 30, 1999

§ 62.13355 Identification of plan—negative declaration.

Letter from the Virgin Islands Department of Planning and Natural Resources, submitted July 17, 2002, certifying that there are no existing small municipal waste combustion units in the Territory of the United States Virgin Islands subject to part 60, subpart BBBB of this chapter.

[FR Doc. 02–31237 Filed 12–10–02; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 67, No. 238
Wednesday, December 11, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–187–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and 767–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200 and 767–300 series airplanes. This proposal would require modification of the installation of the aft pressure bulkhead-to-floor insulation blankets. This action is necessary to avoid interference with venting during a rapid decompression in the bulk cargo compartment; such interference could result in damage to the floor structure as well as damage to certain control cables leading to the empennage, leading to reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–187–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-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–187–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 the proposed rule 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.

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:

Comments Invited

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

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 proposed 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 proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–187–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–187–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that, during the structural integrity certification of the Model 767–400ER series airplane, the manufacturer found that the seal created by the insulation blankets in the aft pressure bulkhead-to-floor area did not allow the airplane to meet requirements for decompression. This condition, if not corrected, could interfere with venting during a rapid decompression in the bulk cargo compartment; such interference could result in damage to the floor structure as well as damage to certain control cables leading to the empennage, possibly leading to reduced controllability of the airplane.

As a result of this finding, the configuration of the insulation blankets in the aft pressure bulkhead-to-floor area was changed in production of the Model 767–400ER series airplanes. The same change was also made to the Model 767–200 and 767–300 series airplanes. However, for those airplanes which had already been delivered, the configuration of the insulation blankets in the aft pressure bulkhead-to-floor area may prevent venting during a rapid decompression in the bulk cargo area. This proposed AD would apply to those airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–25A0300, Revision 1, dated May 2, 2002, which describes procedures for modification of the installation of the aft pressure bulkhead-to-floor insulation blankets. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Clarification of Compliance Time

The service bulletin recommends that the modification be accomplished during the next heavy maintenance check when the aft galleys are removed; such checks are performed approximately every 6 years. This NPRM proposes that the modification be accomplished within 5 years of the effective date of the final rule. Although the compliance time is stated differently in the two documents, the period of time proposed in this NPRM is essentially the same as that in the service bulletin.

Cost Impact

There are approximately 729 airplanes of the affected design in the worldwide fleet. The FAA estimates that 311 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $397 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $179,447, or $577 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2002–NM–187–AD.

Applicability: Model 767–200 and –300 series airplanes, having line numbers 1 through 757 inclusive, 759 through 768 inclusive, 770 through 772 inclusive, 774 through 780 inclusive, 786, and 788 through 790 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent interference with venting during a rapid decompression in the bulk cargo compartment, which could result in damage to the floor structure as well as damage to certain control cables leading to the empennage, leading to reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 60 months of the effective date of this AD: Modify the installation of the aft pressure bulkhead-to-floor insulation blankets, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–25A0300, Revision 1, dated May 2, 2002.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. 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.

Note 2: 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

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

Issued in Renton, Washington, on December 4, 2002.

Vi L. Lipski, Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31179 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

November 26, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Request for comments.

SUMMARY: In the Standard Market Design Notice of Proposed Rulemaking, (67 FR 55452, Aug. 29, 2002), the proposed open access transmission tariff imposes an obligation on an Independent Transmission Provider, if a request for transmission service cannot be accommodated, to use due diligence to expand or modify its transmission system. The Commission invites all interested persons to file comments with respect to whether a merchant transmission provider should have an obligation to expand its merchant transmission facilities.

COMMENTS DUE: Initial comments are due on or before January 10, 2003. Reply comments are due on or before February 17, 2003. (Comments on this issue should be filed in conjunction with any January 10, 2002 comments on transmission planning and pricing, including participant funding).

ADDRESSES: Comments may be filed in paper format or electronically. Address comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lodi D. White, (202) 502–6193.

SUPPLEMENTARY INFORMATION: In the Standard Market Design (SMD) Notice of Proposed Rulemaking, the proposed open access transmission tariff imposes an obligation on an Independent Transmission Provider, if a request for transmission service cannot be accommodated, to use due diligence to expand or modify its transmission system.[1] The Commission invites all interested persons to file comments with respect to whether a merchant transmission provider should have an obligation to expand its merchant transmission facilities (MTF).

In the September 6, 2002 NEPOOL Order,[2] the Commission approved a tariff provision (Section 7 of Schedule 18) dealing with the TransEnergie U.S. Ltd. (TransEnergie) Cross Sound Cable (CSC) which states:

> 7. *No obligation to build.* MTF Provider status under the Tariff shall not impose an obligation to build transmission facilities on the MTF Provider [TransEnergie U.S. Ltd.'s CSC MTF]. The offering of MTF Service under the Tariff shall not impose an obligation to build transmission facilities on the Participants [NEPOOL], [New England] Transmission Owners or System Operator [ISO-New England].

The Commission stated in *NEPOOL* that, while it accepted Section 7 as exempting the CSC MTF in NEPOOL from the obligation to build and as not expanding NEPOOL's obligation to build, NEPOOL's tariff will be subject to change, pursuant to section 206 of the Federal Power Act, if the Commission's policy changes in the future. In light of the NEPOOL order, we seek comment on the following issues:

1. For independent merchant transmission companies would there be any concerns regarding comparability or undue discrimination that would merit an expansion obligation for merchant transmission providers?

2. Are there non-competitive structural conditions that apply to independent merchant transmission companies such as barriers to entry or economies of scale which would justify an obligation to expand? For example, could the control of certain rights of way, such as underwater trenches, be a barrier to entry in some circumstances? Could the control of certain equipment, such as strategically placed interconnection facilities, be a barrier to entry? If so, is an obligation to expand the appropriate regulatory requirement?

3. If an expansion obligation is extended to merchant transmission providers, is it appropriate to limit it to an obligation to allow or facilitate other parties to use the critical entry barrier facilities to expand transmission capability?

4. Should merchant transmission providers that acquire land rights through the use of eminent domain be subject to different obligations than those that do not?

5. How would an expansion obligation impact new investment in transmission infrastructure? How would an expansion obligation impact a merchant transmission provider's business strategy and financing needs?

6. Are there bases other than market power that are relevant to extending an expansion obligation to merchant transmission providers?

7. How should merchant transmission projects be treated in the SMD rule? If the Commission retains the obligation to expand in the SMD rule, should it nevertheless exempt already-approved merchant projects? Should such projects be ''grandfathered'' in order to minimize the financial consequences of regulatory risk?

8. The Commission has approved negotiated rates for merchant transmission facilities based on the premise that the negotiated rates would be capped at the cost of transmission expansion. If there is no obligation to build, should the Commission reconsider whether the negotiated rates remain just and reasonable?

All comments are due no later than January 10, 2003, and reply comments are due on February 17, 2003. Comments on this issue should be filed in conjunction with any January 10, 2002 comments on transmission planning and pricing (including participant funding).

Comments may be filed in paper format or electronically. Those making paper filings should submit the original and 14 copies of their comments to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission strongly encourages electronic filings. Commenters filing their comments via the Internet must prepare their comments in WordPerfect, MS Word, Portable Document Format, or ASCII format (*see http://www.ferc.gov/documents/electronicfilinginitiative/efi/efi.htm,* in particular ''User Guide''). To file the document, access the Commission's Web site at *www.ferc.gov* and click on ''e-Filing'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at (202) 502–8258 or by E-mail to *efiling@ferc.gov*. Do not submit comments to the E-mail address.

The Commission will place all comments in the Commission's public files and they will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet

[1] *See* Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 FR 55452 (Aug. 29, 2002), FERC Stats. & Regs. 32563 (2002).

[2] *NEPOOL*, 100 FERC ¶ 61,259 (2002).

through FERC's Home page using the FERRIS link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31145 Filed 12–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209500–86, REG–164464–02]

RIN 1545–BA10,1545–BB79

Reductions of Accruals and Allocations because of the Attainment of any Age; Application of Nondiscrimination Cross-Testing Rules to Cash Balance Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would provide rules regarding the requirements that accruals or allocations under certain retirement plans not cease or be reduced because of the attainment of any age. In addition, the proposed regulations would provide rules for the application of certain nondiscrimination rules to cash balance plans. These regulations would affect retirement plan sponsors and administrators, and participants in and beneficiaries of retirement plans. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments, requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for April 10, 2003, at 10 a.m., must be received by March 13, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–209500–86), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:ITA:RU (REG–209500–86), room 5226, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by submitting comments directly to the IRS Internet site at: *www.irs.gov/regs.* The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda S. F. Marshall, (202) 622–6090, or R. Lisa Mojiri-Azad, (202) 622–6030; concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 401 and 411 of the Internal Revenue Code of 1986 (Code). Section 411(b)(1)(H), which was added in subtitle C of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86) (100 Stat. 1874), provides that a defined benefit plan fails to comply with section 411(b) if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age. Under section 411(b)(2)(A), added by subtitle C of OBRA '86, a defined contribution plan fails to comply with section 411(b) unless, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

Section 411(b)(1)(H)(iii) provides that any requirement of continued accrual of benefits after normal retirement age is treated as satisfied to the extent benefits are distributed to the participant or the participant's benefits are actuarially increased to reflect the delay in the distribution of benefits after attainment of normal retirement age. Section 411(a) requires a qualified plan to meet certain vesting requirements. In the case of a participant in a defined benefit plan who works after attaining normal retirement age, these vesting requirements are not satisfied unless the plan provides an actuarial increase after normal retirement age for accrued benefits, distributes benefits while the participant is working after normal retirement age, or suspends benefits as described in section 411(a)(3)(B) (and the regulations of the Department of Labor at 29 CFR 2530.203–3). Section 401(a)(9)(C)(iii), added to the Code by the Small Business Job Protection Act of 1996 (110 Stat. 1755) (1996), requires that the accrued benefit of any employee who retires after age 70½ be actuarially increased to take into account the period after age 70½ during which the employee is not receiving benefits.

Section 4(i) of the Age Discrimination in Employment Act (ADEA) and sections 204(b)(1)(H) and 204(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) provide requirements comparable to those in sections 411(b)(1)(H) and 411(b)(2) of the Code. Section 4(i)(4) of ADEA provides that compliance with the requirements of section 4(i) with respect to an employee pension benefit plan constitutes compliance with the requirements of section 4 of ADEA relating to benefit accrual under the plan.

Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Therefore, these regulations apply for purposes of the parallel requirements of sections 204(b)(1)(H) and 204(b)(2) of ERISA, as well as for section 411(b) of the Code.

The Equal Employment Opportunity Commission (EEOC) has jurisdiction over section 4 of ADEA. Section 9204(d) of OBRA '86 requires that the regulations and rulings issued by the Department of Labor, the Treasury Department, and the EEOC pursuant to the amendments made by subtitle C of OBRA '86 each be consistent with the others. It further requires the Secretary of Labor, the Secretary of the Treasury, and the EEOC to each consult with the others to the extent necessary to meet the requirements of the preceding sentence. Executive Order 12067 requires all Federal departments and agencies to ''advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity.'' The IRS and Treasury have consulted with the Department of Labor and the EEOC prior to the issuance of these proposed regulations under sections 411(b)(1)(H) and 411(b)(2) of the Code.

The EEOC published proposed regulations interpreting section 4(i) of ADEA in the **Federal Register** on November 27, 1987 (52 FR 45360). Proposed regulations REG–209500–86 (formerly EE–184–86) under sections 411(b)(1)(H) and 411(b)(2) were previously published by the IRS and Treasury in the **Federal Register** on April 11, 1988 (53 FR 11876), as part of a package of regulations (the 1988 proposed regulations) that also included proposed regulations under sections 410(a), 411(a)(2), 411(a)(8) and 411(c) (relating to maximum age for participation, vesting, normal retirement age, and actuarial adjustments after normal retirement age). The IRS, Treasury, the Department of Labor, and

the EEOC consulted prior to the issuance of both sets of proposed regulations.

Notice 88–126 (1988–2 CB 538), addressed certain effective date issues for sections 411(b)(1)(H) and 411(b)(2). The EEOC issued a similar notice addressing those effective date issues in the **Federal Register** on January 9, 1989 (54 FR 604). The United States Supreme Court subsequently issued an opinion addressing the effective date of section 411(b)(1)(H) in *Lockheed Corp.* v. *Spink,* 517 U.S. 882 (1996), which is discussed below.

On October 20, 1999, the IRS and Treasury published a solicitation for comments in the **Federal Register** (64 FR 56578) inviting comments regarding potential issues under their jurisdiction with respect to cash balance plans (a type of defined benefit plan under which the normal form of benefit is an immediate payment of a participant's hypothetical account, which is adjusted periodically to reflect pay credits and interest credits), conversions of traditional defined benefit plans to cash balance plans and associated wear-away or benefit plateau effects. Hundreds of comments were received from a wide range of parties with interests in cash balance plans, including employees, employers, and their representatives. The most significant issue raised in the comments relates to the application of section 411(b)(1)(H) to cash balance plans and conversions of traditional defined benefit plans to cash balance plans.

These proposed regulations are being issued after consideration of the comments on the 1988 proposed regulations, as well as more recent comments concerning the application of sections 411(b)(1)(H) and 411(b)(2). These proposed regulations address the application of section 411(b)(1)(H) to cash balance plans, including conversions.

These proposed regulations would also amend the provisions of the regulations under section 401(a)(4) to provide rules for nondiscrimination testing for certain cash balance plans.

Explanation of Provisions

Overview

These proposed regulations provide guidance on the requirements of section 411(b)(1)(H), under which a defined benefit plan fails to be a qualified plan if, under the plan, benefit accruals on behalf of a participant are ceased or the rate of benefit accrual on behalf of a participant is reduced because of the participant's attainment of any age.[1] Similarly, these proposed regulations provide guidance on the requirements of section 411(b)(2), under which a defined contribution plan fails to be a qualified plan if, under the plan, allocations to a participant's account are ceased or the rate of allocations to a participant's account is reduced because of the participant's attainment of any age.

These proposed regulations follow the 1988 proposed regulations in many respects. In particular, these proposed regulations would adopt many of the positions taken under the 1988 proposed regulations for determining whether a plan ceases benefit accruals or allocations because of the attainment of any age or provides for a direct or indirect reduction in the rate of benefit accrual or allocation because of the attainment of any age.

These proposed regulations also provide guidance on how to determine the rate of benefit accrual or rate of allocation. In the case of defined benefit plans, the proposed regulations would provide two basic approaches to determining the rate of benefit accrual: a general approach applicable to all defined benefit plans; and a separate approach applicable to eligible cash balance plans, as defined in these proposed regulations. These proposed regulations also provide guidance on determining the rate of allocation under a defined contribution plan.

Finally, these proposed regulations address other related issues also addressed in the 1988 proposed regulations, including the application of sections 411(b)(1)(H) and 411(b)(2) to optional forms of benefits, ancillary benefits and other rights and features, the coordination of the requirements of sections 411(b)(1)(H) and 411(b)(2) with certain other qualification requirements under the Code, such as sections 401(a)(4), 411(a), and 415, and the effective date of sections 411(b)(1)(H) and 411(b)(2).

Applicability Prior to Normal Retirement Age

Sections 411(b)(1)(H) and 411(b)(2) prohibit cessation of accruals or allocations, and reduction in the rate of benefit accrual or allocation, because of the attainment of any age. Under these sections, attainment of any age means a participant's growing older. Accordingly, these regulations, like the 1988 proposed regulations, would apply regardless of whether the participant is older than, younger than, or at normal retirement age.

Some commentators have suggested that only cessations or reductions after attainment of normal retirement age are prohibited by these sections. This interpretation is not consistent with the language of the statute, which does not specify any minimum age at which the rule applies, and is not adopted under these proposed regulations.

Reduction in Rate of Benefit Accrual Because of Attainment of Any Age

Under these proposed regulations, a defined benefit plan fails to comply with section 411(b)(1)(H) if, either directly or indirectly, a participant's rate of benefit accrual is reduced (which includes a cessation of participation in the plan or other discontinuance of benefit accruals) because of the participant's attainment of any age. A plan provides for a reduction in the rate of benefit accrual that is directly because of the attainment of any age if, during a plan year, under the terms of the plan, any participant's rate of benefit accrual for the plan year would be higher if the participant were younger. Thus, a plan fails to comply with section 411(b)(1)(H) if, under the terms of the plan, the rate of benefit accrual for any individual who is or could be a participant under the plan would be lower solely as a result of such individual being older. Whether there is an actual participant at any particular age is not relevant. Similarly, whether a reduction in the rate of benefit accrual is because of the attainment of any age does not depend on a comparison of a participant's rate of benefit accrual for a year to that participant's rate of benefit accrual in an earlier year. These proposed regulations include a number of examples (at § 1.411(b)–2(b)(3)(iii) of these regulations) which illustrate whether a reduction in the rate of benefit accrual is because of the attainment of any age.

A reduction in the rate of benefit accrual is indirectly because of a participant's attainment of any age if any participant's rate of benefit accrual for the plan year would be higher if the participant were to have a different characteristic that is a proxy for being younger, based on all the relevant facts and circumstances. For example, if a company assigns older workers to one division and younger workers to another even though they perform the same work, then assignment to a division

[1] While section 4(i) of the ADEA, section 204(b)(1)(H) of ERISA, and section 411(b)(1)(H) of the Code are worded similarly, the words ''attainment of any'' are not in section 4(i) of the ADEA. The legislative history states that no differences among the provisions is intended (OBRA 86 House Report No. 99–727 at 378–9), and the agencies have concluded that this particular difference in language has no effect.

would be a proxy for being older or younger.

Like the 1988 proposed regulations, these proposed regulations provide that a reduction in a participant's rate of benefit accrual is not indirectly because of the attainment of any age in violation of section 411(b)(1)(H) solely because of a positive correlation between attainment of any age and a reduction in the rate of benefit accrual. In addition, a defined benefit plan does not fail to satisfy section 411(b)(1)(H) solely because, on a uniform and consistent basis without regard to a participant's age, the plan limits the amount of benefits a participant may accrue under the plan or limits the number of years of service or participation taken into account for purposes of determining the accrual of benefits under the plan, whether the plan reduces or ceases accruals for service in excess of such limit. A limitation that is expressed as a percentage of compensation (whether averaged over a participant's total years of credited service for the employer or over a shorter period) is a permissible limitation on the amount of benefits a participant may accrue under the plan.

Rate of Benefit Accrual

Neither section 411(b)(1)(H) nor the 1988 proposed regulations define the rate of benefit accrual. These proposed regulations would provide two basic approaches to determining the rate of benefit accrual, based on the way the benefit is expressed in the plan. One approach may be used by all defined benefit plans. A second approach may be used only by an eligible cash balance plan, as defined in these proposed regulations.

Under the general rule, the rate of benefit accrual for any plan year that ends before the participant attains normal retirement age is the increase in the participant's accrued normal retirement benefit for the year. Because the rate of benefit accrual is determined by reference to the increase in the accrued benefit during the plan year, any subsidized portion of an early retirement benefit, any qualified disability benefit, or any social security supplement is disregarded.

Section 411(b)(1)(H)(iii)(II) provides that a defined benefit plan does not fail to comply with section 411(b)(1)(H) for a plan year to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age. These proposed regulations implement this rule (*i.e.*, permit a plan to offset any actuarial adjustment during the year against the otherwise required accruals under the plan), by providing that the rate of benefit accrual after normal retirement age is equal to the excess, if any, of the annual benefit to which the participant is entitled at the end of the plan year over the annual benefit to which the participant would have been entitled at the end of the preceding plan year. For this purpose, the annual benefit is determined assuming that payment commences in the normal form of benefit under the plan at the end of the applicable year. For purposes of these proposed regulations, the normal form of benefit is the form under which payments due to the participant are expressed under the plan, prior to adjustment for form of benefit.

The methodology of determining a year-by-year rate of accrual, taking into account any actuarial increases during the plan year, is a departure from the methodology used in the 1988 proposed regulations. As a consequence of the methodology used in these proposed regulations, the plan may not reduce a participant's rate of benefit accrual in a plan year to take into account the fact that, in the preceding plan year, the actuarial increase was greater than the accrual under the plan formula.

While any actuarial adjustment made to the annual benefit to which the participant would have been entitled at the end of the preceding plan year is included in the rate of benefit accrual after normal retirement age, a defined benefit plan must separately comply with the requirements of section 411(a), which are not addressed in these proposed regulations. Thus, for example, a plan that does not provide for suspension of benefits in accordance with section 411(a)(3) must provide for actuarial adjustments of the amount that would otherwise be paid (or distributions of that amount) that are adequate to satisfy section 411(a) and 29 CFR 2530.203–3 of the regulations of the Department of Labor. In addition, the plan must comply with section 401(a)(9)(C)(iii) with respect to actuarial adjustments for participants who retire after attainment of 70½.

Section 411(b)(1)(H)(iii)(I) provides that a defined benefit plan will not fail to satisfy section 411(b)(1)(H) to the extent of the actuarial equivalent of in-service distribution of benefits. Under these proposed regulations, the rate of benefit accrual for a participant who has attained normal retirement age may be reduced by the actuarial value of plan benefit distributions made during the year. This reduction is the equivalent of the provision described above under which a defined benefit plan may offset any actuarial adjustment during the year against the otherwise required accruals for the year. As described immediately below, the manner in which distributions made under the plan are taken into account for a plan year under these regulations is designed so that compliance with section 411(b)(1)(H) is not affected by the optional form in which the distribution is made.

In the plan year during which a distribution is made, distributions are taken into account to the extent the actuarial value of the distribution does not exceed the actuarial value of distributions that would have been made during the plan year had distribution of the participant's full accrued benefit at the beginning of the plan year commenced at the beginning of the plan year (or, if later, at the participant's normal retirement age) in the normal form of benefit. Distributions in excess of the actuarial value of the distribution that would have been made during the plan year had the distribution of the participant's full accrued benefit commenced in the normal form (called accelerated benefit payments) are disregarded for that plan year, but, as described below, are taken into account in subsequent periods. If the participant is receiving a distribution in an optional form of benefit under which the amount payable annually is less than the amount payable under the normal form of benefit (for example, a QJSA under which the annual benefit is less than the amount payable annually under a straight life annuity normal form), the participant may be treated as receiving payments under an actuarially equivalent normal form of benefit.

Any accelerated benefit payments are taken into account in plan years after the plan year in which the distribution was made by converting the accelerated benefit payments to an actuarially equivalent stream of annual benefit payments under the plan's normal form of benefit distributions, commencing at the beginning of the next following plan year. This equivalent stream of annual benefit payments is then deemed to be paid in plan years after the plan year in which the distribution was made, and the calculation of the rate of benefit accrual after normal retirement age is adjusted by adding any of these deemed payments for future plan years to the annual benefit to which the participant is entitled at the end of a plan year. As so adjusted, therefore, the rate of benefit accrual is determined as the excess, if any, of the sum of the annual benefit to which the participant is entitled at the end of the plan year (assuming payment commences in the normal form at the end of the plan year) plus the annuity

equivalent of accelerated benefit payments deemed paid in the next plan year, over the sum of the annual benefit to which the participant would have been entitled at the end of the preceding plan year (assuming that payment commences in the normal form at the later of normal retirement age and the end of the preceding plan year), plus the annuity equivalent of accelerated benefit payments deemed paid during the plan year. The effect of this adjustment, in the case of a single sum distribution, is to put the participant in the same position as if the participant had received the distribution in the normal form.

Eligible Cash Balance Plans

The 1988 proposed regulations did not contain any guidance specific to cash balance plans. A cash balance plan is a type of defined benefit plan that determines benefits by reference to an employee's hypothetical account. Since the 1988 proposed regulations were issued, the number of cash balance plans has increased. The development of cash balance plans has raised the issue of whether this design complies with section 411(b)(1)(H).

Under a cash balance plan, an employee's hypothetical account balance is credited with hypothetical allocations, often referred to as service credits or pay credits, and hypothetical earnings, often referred to as interest credits. Under some cash balance plans, the right to interest credits for future periods accrues at the same time as the pay credit (*i.e.*, the interest credit is not contingent on the performance of services in the future). Under other cash balance plans, all or some portion of the interest credit for future periods is contingent on the performance of services in the future. The benefit under a cash balance plan is expressed in the plan document (and communicated to employees) as the hypothetical account balance, although not all cash balance plans provide a single sum distribution.

Under a cash balance plan, the interest credits for a younger participant will compound over a greater number of years until normal retirement age than for an older participant. This will result in a larger accrual for younger employees, when measured as the increase in the benefit payable at normal retirement age. Accordingly, some commentators have argued that the basic cash balance plan design violates section 411(b)(1)(H). Others have asserted that cash balance plans do not violate section 411(b)(1)(H) if the additions to the hypothetical account are not smaller because of the attainment of any age. They argue that, because pay credits under a cash balance plan are comparable to allocations under a defined contribution plan, these pay credits are an appropriate measure for testing whether a cash balance plan satisfies section 411(b)(1)(H).

These proposed regulations would provide that the rate of benefit accrual under an eligible cash balance plan, as defined in these proposed regulations, is permitted to be determined as the additions to the participant's hypothetical account for the plan year, except that previously accrued interest credits are not included in the rate of benefit accrual. Because the rate of benefit accrual is determined based on how benefits are expressed under the plan, this method of determining the rate of benefit accrual is restricted to eligible cash balance plans, as defined in these proposed regulations.

An eligible cash balance plan is a defined benefit plan that satisfies certain requirements. First, for accruals in the current plan year, the normal form of benefit is an immediate payment of the balance in a hypothetical account. As long as the normal form of benefit is an immediate payment of the balance in a hypothetical account, a plan does not fail to be an eligible cash balance plan merely because a single-sum distribution of that amount is not actually available as a distribution option under the plan.

Second, a plan is an eligible cash balance plan only if the plan provides that, at the same time that the participant accrues an addition to the hypothetical account, the participant accrues the right to future interest credits (without regard to future service) at a reasonable rate of interest that does not decrease because of the attainment of any age. Because the rate of benefit accrual under an eligible cash balance plan is generally determined by reference to additions to the hypothetical account disregarding interest credits, these interest credits must be provided for all future periods, including after normal retirement age, and an eligible cash balance plan cannot treat interest credits after normal retirement age as actuarial increases that are offset against the otherwise required accrual. A participant is not treated as having the right to future interest credits if the plan provides that additions to the hypothetical account under the plan are reduced for the actuarial equivalent of any in-service distributions because, as discussed above, such a reduction is the equivalent of an offset for an actuarial adjustment. Any additional interest credits under an eligible cash balance plan that do not accrue at the same time as the corresponding addition to the hypothetical account are included in determining the rate of benefit accrual in the year in which those additional interest credits are accrued.

In addition, a plan that is converted to a cash balance plan is subject to certain requirements, discussed below.

There are other hybrid designs that would satisfy some, but not all, of the requirements for an eligible cash balance plan. For example, there are some designs under which the normal form of benefit is the immediate payment of an account balance, but which do not provide for reasonable interest credits on that account balance. Under these proposed regulations, the rate of benefit accrual under these plans would be determined under the general rules applicable to traditional defined benefit plans.

Plans With Mixed Formulas

Some defined benefit plans have both a traditional defined benefit formula and a cash balance formula, and these proposed regulations provide rules for plans with such a mixed formula. If a portion of the plan formula under a defined benefit plan would satisfy the requirements for an eligible cash balance plan if that were the only formula under the plan, then that portion of the plan formula is referred to as an eligible cash balance formula in these proposed regulations. Any other portion of the plan formula is referred to as a traditional defined benefit formula.

The portion that is an eligible cash balance formula (or formulas if the plan has multiple eligible cash balance formulas) would be permitted to be tested using the rules for eligible cash balance plans, with the remainder of the plan tested under the rules for a traditional defined benefit formula (regardless of how many traditional defined benefit formulas the plan may have). This rule applies only if each such separately-treated plan would satisfy the maximum age conditions in section 410(a)(2) and the eligible cash balance and traditional defined benefit formulas interact in one of three specific ways for current and future accruals. The three ways are: (1) The plan provides that the participant's benefit is based on the sum of accruals under two different formulas (either sequentially where the cash balance formula goes into effect during the year or simultaneously where the plan provides for a participant to accrue benefits under both a traditional defined benefit formula and a cash balance formula at the same time with the participant to be entitled to the sum of the two); (2) the

plan provides a benefit for a participant equal to the greater of the benefit determined under two or more formulas, one of which is an eligible cash balance formula and the other of which is not; or (3) under the plan, some participants are eligible for accruals only under an eligible cash balance formula and the remaining participants are eligible for accruals only under a traditional defined benefit formula or the other 2 specific methods. If the eligible cash balance formula and the traditional defined benefit formula interact in any other manner, the plan is not treated as an eligible cash balance plan for any portion of the plan formula.

Amendments Establishing an Eligible Cash Balance Formula

In many cases, a plan sponsor amends a traditional defined benefit plan to make it a cash balance plan. This process is often referred to as a ''conversion.'' The terms of cash balance conversions vary, but often provide an opening hypothetical account balance for each participant. In some cases, the opening balance may be based on the participant's prior accrued benefit under the traditional defined benefit plan or on the participant's prior service with the plan sponsor. In other cases, the opening balance is set at zero, and each participant is entitled to the sum of the participant's accrued benefit under the traditional defined benefit plan and the cash balance account.

Some commentators have questioned whether certain cash balance conversions that provide for the establishment of an opening account balance satisfy section 411(b)(1)(H). These commentators have noted that, under section 411(d)(6), the participant can never be denied payment of the prior accrued benefit. They note that, if the opening account balance and subsequent interest credits through normal retirement age generate benefits that are not at least as large as the prior accrued benefit, the participant will not accrue net benefits for some period after the conversion. This period, often referred to as a ''wear-away'' period, will continue until the participant's account balance generates benefits that exceed the prior accrued benefit. These commentators argue that the wear-away period inherently produces a lower rate of accrual for older participants.[2]

Other commentators have argued that a wear-away period does not violate section 411(b)(1)(H) because the length of the wear-away period is determined not by the participant's age but by the size of the participant's prior accrued benefit under the traditional defined benefit plan. Additionally, commentators have pointed out that, because the prior accrued benefit is calculated using an interest rate determined at the time of the amendment but the interest credits under the cash balance plan often fluctuate under a variable index, a participant may move in or out of a wear-away period after a cash balance conversion solely because of future changes in interest rates.

Under these proposed regulations, the mere conversion of a traditional defined benefit plan to a cash balance plan would not cause the plan to fail section 411(b)(1)(H). However, a converted plan that otherwise would be treated as an eligible cash balance plan must satisfy one of two alternative rules. Under the first alternative, the converted plan must determine each participant's benefit as not less than the sum of the participant's benefits accrued under the traditional defined benefit plan and the cash balance account. A plan satisfying this first alternative will not have a wear-away period for benefits accrued under the traditional defined benefit plan.

Under the second alternative, the converted plan must establish each participant's opening account balance as an amount not less than the actuarial present value of the participant's prior accrued benefit, using reasonable actuarial assumptions. For this purpose, an interest rate assumption is not treated as reasonable if it increases, directly or indirectly, because of the participant's attainment of any age (which would result in lower present values for older participants). This alternative does not preclude the possibility of a wear-away period for some or all the participants in the plan, but it ensures that the opening account balance of each participant reflects the actuarial value of the prior accrued benefit, determined by using reasonable assumptions. Any excess in the opening account balance over the present value of a participant's previously accrued benefit is included as part of the participant's rate of benefit accrual for the plan year, and thus is tested under section 411(b)(1)(H) along with other pay credits for the year. Effectively, this alternative provides that a converted plan will not fail to satisfy section 411(b)(1)(H) if the benefit formula before the conversion satisfies section 411(b)(1)(H), the opening account balance is based on actuarial assumptions that are reasonable (and an interest rate that does not increase for older participants), and the benefit formula after the conversion—including any excess in the opening account balance over the present value of a participant's previously accrued benefit—satisfies section 411(b)(1)(H).

Use of Compensation in Calculating Rate of Benefit Accrual

A participant's rate of benefit accrual for a plan year can be determined as a dollar amount. Alternatively, if a plan's formula bases a participant's accruals on current compensation, then a participant's rate of benefit accrual can be determined as a percentage of the participant's current compensation. Likewise, if a plan's formula bases a participant's accruals on average compensation, then a participant's rate of benefit accrual can be determined as a percentage of that measure of the participant's average compensation. In order for the participant's rate of benefit accrual to be determined as a percentage of the participant's current or average compensation, compensation must be determined without regard to attainment of any age. The alternative of using current or average compensation simplifies testing, without changing the result.

Defined Contribution Plans

A defined contribution plan fails to comply with section 411(b)(2) if, either directly or indirectly, because of a participant's attainment of any age, the allocation of employer contributions or forfeitures to the account of the participant is discontinued or the rate at which the allocation of employer contributions or forfeitures is made to the account of the participant is decreased. For determining if there is a cessation or reduction in allocations because of attainment of any age, these proposed regulations would adopt a substantive standard that is similar to the standard that applies under these proposed regulations for defined benefit plans and to the standard that was proposed in the 1988 proposed regulations.

A reduction in the rate of allocation is directly because of a participant's

[2] This type of wear-away differs from a wear-away that results from the fact that certain optional forms of benefit may be subsidized under the traditional defined benefit plan but not under the cash balance plan or that other actuarial factors may produce a larger benefit amount prior to normal retirement age under the traditional defined benefit plan but not under the cash balance plan. This may occur even though the actuarial value of the accrued benefit under the traditional defined benefit plan is included in the participant's opening account balance. Although section 411(d)(6) protects optional forms of benefit under the pre-amendment formula, section 411(b)(1)(H)(iv) specifically provides that a reduction because of the attainment of any age does not occur as a result of the subsidized portion of an early retirement benefit.

attainment of any age for a plan year if under the terms of the plan, any participant's rate of allocation during the plan year would be higher if the participant were younger.

A reduction in the rate of allocation is indirectly because of a participant's attainment of any age if any participant's rate of allocation during the plan year would be higher if the participant were to have any characteristic which is a proxy for being younger, based on applicable facts and circumstances. A cessation or reduction in allocations is not indirectly because of the attainment of any age solely because of a positive correlation between attainment of any age and a reduction in the allocations or rate of allocation. Thus, a defined contribution plan does not provide for cessation or reduction in allocations solely because the plan limits the total amount of employer contributions and forfeitures that may be allocated to a participant's account or limits the total number of years of credited service that may be taken into account for purposes of determining allocations for the plan year.

Target benefit plans (defined contribution plans under which contributions are determined by reference to a targeted benefit described in the plan) are subject to section 411(b)(2) which applies to defined contribution plans. Under these proposed regulations, a target benefit plan would satisfy section 411(b)(2) only if the defined benefit formula used to determine allocations would satisfy section 411(b)(1)(H) without regard to section 411(b)(1)(H)(iii) relating to adjustments for distributions and actuarial increases. A target benefit plan would not fail to satisfy section 411(b)(2) with respect to allocations after normal retirement age merely because the allocation for a plan year is reduced to reflect an older participant's shorter longevity using a reasonable actuarial assumption regarding mortality. These proposed regulations also would authorize the Commissioner to develop additional guidance with respect to the application of section 411(b)(2) to target benefit plans.

Optional Forms of Benefit and Other Rights and Features

These proposed regulations generally retain the requirements applicable to optional forms of benefit that were in the 1988 proposed regulations. Under these rules, with the exceptions noted below, a participant's rate of benefit accrual under a defined benefit plan and a participant's allocations under a defined contribution plan are considered to be reduced because of the participant's attainment of any age if optional forms of benefits, ancillary benefits, or other rights or features otherwise provided to a participant under the plan are not provided, or are provided on a less favorable basis, with respect to benefits or allocations attributable to credited service because of the participant's attainment of any age. In addition, a plan would not fail to satisfy section 411(b)(1)(H) merely due to variance because of the attainment of any age with respect to the subsidized portion of an early retirement benefit (whether provided on a temporary or permanent basis), a qualified disability benefit (as defined in § 1.411(a)–7(c)(3)), or a social security supplement (as defined in § 1.411(a)–7(c)(4)(ii)).[3] These proposed regulations also clarify that a plan would not fail to satisfy section 411(b)(1)(H) merely because the plan makes actuarial adjustments using a reasonable assumption regarding mortality to calculate optional forms of benefit or to calculate the cost of providing a qualified preretirement survivor annuity, as defined in section 417(c).

Coordination With Other Provisions

Sections 411(b)(1)(H)(v) and 411(b)(2)(C) both provide for the coordination of the requirements of each section with other applicable qualification requirements. Under these proposed regulations, a plan will not fail to satisfy section 411(b)(1)(H) or 411(b)(2) because of a limit on accruals or allocations necessary to comply with the limitations of section 415 or to prevent discrimination in favor of highly compensated employees within the meaning of section 401(a)(4). Additionally, these proposed regulations would authorize the Commissioner to provide additional guidance relating to prohibited discrimination in favor of highly compensated employees. These proposed regulations would also provide that no benefit accrual or allocation is required under section 411(b)(1)(H) or 411(b)(2) for a plan year to the extent such allocation or accrual would cause the plan to fail to satisfy the requirements of section 401(l) (relating to permitted disparity) for the plan year, such as if a younger person has a smaller permitted disparity due to having a later social security retirement age. Further, under these proposed regulations, a plan would not fail to satisfy section 411(b)(1)(H) or 411(b)(2) for a plan year merely because of the distribution rights provided under section 411(a)(11), including deferral rights for participants whose benefits are immediately distributable within the meaning of § 1.411(a)–11(c).

Application of Section 401(a)(4) to New Comparability Cash Balance Plans

These proposed regulations also include a proposed amendment to the regulations under section 401(a)(4). This amendment would provide that a defined benefit plan that determines compliance with section 411(b)(1)(H) by using the special definition of rate of accrual for an eligible cash balance plan is not permitted to demonstrate that the benefits provided under the arrangement do not discriminate in favor of highly compensated employees by using an inconsistent method (*i.e.*, an accrual rate based on the normal retirement benefit), unless the plan complies with a modified version of the provisions of the regulations under section 401(a)(4) related to cross-testing by a defined contribution plan. Under these requirements, an eligible cash balance plan under which the additions to the hypothetical account are neither broadly available nor reflect a gradual age and service schedule, as defined under existing regulations relating to cross-tested defined contribution plans, may test on the basis of benefits only if the plan satisfies a minimum allocation gateway.

The minimum allocation gateway generally requires that the hypothetical allocation rate for each nonhighly compensated employee be at least one-third of the hypothetical allocation rate for the highly compensated employee with the highest hypothetical allocation rate. However, the minimum allocation gateway is also satisfied if the hypothetical allocation rate for each nonhighly compensated employee is no less than 5%, provided the highest hypothetical allocation rate for any highly compensated employee is not in excess of 25%. If the highest hypothetical allocation rate is above 25%, the 5% factor is increased, up to as much as 7.5%. This minimum allocation gateway, which is normally applicable to DB/DC plans (*i.e.*, defined benefit plans and defined contribution plans that are combined for nondiscrimination testing), is used for purposes of eligible cash balance plans, rather than the minimum allocation gateway normally applicable to defined contribution plans, because hypothetical allocations under a cash balance plan can be significantly greater than allocations under a defined contribution plan.

[3] The ADEA also includes special rules relating to certain of these benefits. *See* 29 U.S.C. 623(f)(2) and (l).

If the eligible cash balance plan is aggregated with other plans that are not cash balance plans, the regulations would treat the cash balance plan as a defined contribution plan for purposes of applying the rules applicable to aggregated plans. For this purpose, a plan with both an eligible cash balance formula and a traditional defined benefit formula is treated as an aggregation of two plans.

Effective Date of Sections 411(b)(1)(H) and 411(b)(2)

The 1988 proposed regulations included provisions related to the effective date of sections 411(b)(1)(H) and 411(b)(2). The effective date provisions in these proposed regulations differ from the 1988 proposed regulations (and Notice 88–126) in order to reflect the decision in *Lockheed Corp.* v. *Spink,* 517 U.S. 882 (1996).

In general, sections 411(b)(1)(H) and 411(b)(2) are effective for plan years beginning on or after January 1, 1988 with respect to a participant who is credited with at least one hour of service in a plan year beginning on or after January 1, 1988. In the case of a participant who is credited with at least one hour of service in a plan year beginning on or after January 1, 1988, section 411(b)(1)(H) is effective with respect to all years of service completed by the participant, except that, in accordance with *Lockheed Corp.* v. *Spink,* plan years beginning before January 1, 1988 are excluded. For purposes of these proposed regulations, an hour of service includes any hour required to be recognized under the plan by section 410 or 411.

Similarly, section 411(b)(2) does not apply with respect to allocations of employer contributions or forfeitures to the accounts of participants under a defined contribution plan for a plan year beginning before January 1, 1988.

These proposed regulations would also provide a special effective date for a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers, ratified before March 1, 1986. For such plans, sections 411(b)(1)(H) and 411(b)(2) are effective for benefits provided under, and employees covered by, any such agreement with respect to plan years beginning on or after the later of (i) January 1, 1988 or (ii) the earlier of January 1, 1990 or the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension of any such agreement occurring on or after March 1, 1986). The otherwise generally applicable effective date rules would apply to a collectively bargained plan, as of the effective date of section 411(b)(1)(H) or 411(b)(2) applicable to such plan.

Proposed Effective Date

The regulations are proposed to be applicable to plan years beginning after the date final regulations are published in the **Federal Register**. These proposed regulations cannot be relied upon until adopted in final form. However, until these regulations are adopted in final form, the reliance provided on the 1988 proposed regulations continues to be available. In addition, the proposed regulations at §§ 1.410(a)–4A, 1.411(a)–3, 1.411(b)–3 and 1.411(c)–1(f)(2) (relating to maximum age for participation, vesting, normal retirement age, and actuarial adjustments after normal retirement age), which were published in the same notice of proposed rulemaking as the 1988 proposed regulation and which are not republished here, are also expected to be finalized for future plan years.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at *www.irs.gov/regs.* All comments will be available for public inspection and copying. The IRS and Treasury request comments on the clarity of the proposed rules and how they may be made easier to understand or to implement. Comments are also requested on the following issues:

- Because these proposed regulations are based on a year-by-year determination of the rate of benefit accrual that does not accommodate averaging over a period of earlier years, one result would be that, if a higher accrual is provided for older workers in one year, the rates cannot be leveled out in subsequent periods in a manner that takes the earlier higher accruals into account. This might occur for a change from a fractional accrual method to a unit credit method for all years of service. Comments are requested on whether rates should be permitted to be averaged and, if so, under what conditions.
- In the case of a conversion of a traditional defined benefit plan to a cash balance plan, these proposed regulations generally provide for any excess of a participant's opening hypothetical account balance over the present value of the participant's prior accrued benefit to be tested for age discrimination. Comments are requested on whether any other portion of the hypothetical account balance should be disregarded in applying section 411(b)(1)(H) under other circumstances, for example, if the opening account balance is a reconstructed cash balance account (*i.e.*, the account balance that each participant would have had at the time of the conversion if the cash balance formula had been in effect for the participant's entire period of service). In addition, comments are requested on the effect of these rules on employers, if any, that may have used the extended wear-away transition rule of § 1.401(a)(4)–13(f)(2)(i).
- Because these proposed regulations provide for the rate of benefit accrual under section 411(b)(1)(H) to be based on the annual increase in the accrued benefit under the plan, the rate of benefit accrual under a floor offset plan, as described in Rev. Rul. 76–259 (1976–2 CB 111), would be determined after taking into account the amount of the offset. Comments are requested on whether the rate of benefit accrual for a floor offset plan should be tested before application of the offset and, if so, under what conditions. For example, should the rate of benefit accrual for a floor offset plan be tested before application of the offset if the plan provides an actuarial increase after normal retirement age or if the annuity purchase rate used to calculate the offset is not less favorable after normal retirement age than the annuity purchase rate applicable at normal retirement age.

A public hearing has been scheduled for April 10, 2003, at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. All visitors must present photo identification to enter the

building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts at the Constitution Avenue entrance. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 13, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Linda S. F. Marshall and R. Lisa Mojiri-Azad of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following citation in numerical order:

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

Section 1.411(b)–2 is also issued under 26 U.S.C. 411(b)(1)(H) and 411(b)(2). * * *

Par. 2. Section 1.401(a)(4)–3 is revised as follows:

1. A new sentence is added before the last sentence of paragraph (a)(1).

2. Paragraph (g) is added.

The additions and revisions read as follows:

§ 1.401(a)(4)–3 Nondiscrimination in amount of employer-provided benefits under a defined benefit plan.

(a) *Introduction*—(1) *Overview.* * * * Paragraph (g) of this section provides additional rules that apply to a plan that satisfies the requirements of section 411(b)(1)(H) and § 1.411(b)–2 using the rate of benefit accrual determined pursuant to the rules of § 1.411(b)–2(b)(2)(iii) for eligible cash balance plans. * * *

* * * * *

(g) *Additional rules for eligible cash balance plans*—(1) *In general.* Notwithstanding the provisions of paragraphs (a) through (f) of this section, a plan that satisfies the requirements of section 411(b)(1)(H) and § 1.411(b)–2 using the rate of benefit accrual under the plan or a portion of the plan determined pursuant to the rules of § 1.411(b)–2(b)(2)(iii) for eligible cash balance plans is permitted to satisfy the requirements of section 401(a)(4) by satisfying the requirements of this section (relating to nondiscrimination in amount of employer-provided benefits) only if the plan satisfies paragraph (g)(2) or (3) of this section, as applicable.

(2) *Eligible cash balance plans not aggregated with another defined benefit plan.* A plan described in paragraph (g)(1) of this section under which benefits are determined solely in accordance with an eligible cash balance formula (as defined in § 1.411(b)–2(b)(2)(iii)(C)(*1*)) satisfies this paragraph (g)(2) only if the plan meets either of the following conditions—

(i) The plan would satisfy the requirements of § 1.401(a)(4)–8(b)(1)(iii) or (iv) by treating the additions to the hypothetical account that are included in the rate of benefit accrual under the rules of § 1.411(b)–2(b)(2)(iii)(A) as allocations under a defined contribution plan; or

(ii) The plan would satisfy the requirements of § 1.401(a)(4)–9(b)(2)(v)(D) by treating the additions to the hypothetical account that are included in the rate of benefit accrual under the rules of § 1.411(b)–2(b)(2)(iii)(A) as allocations under a defined contribution plan for purposes of determining equivalent normal allocation rates (within the meaning of § 1.401(a)(4)–9(b)(2)(ii)).

(3) *Eligible cash balance plans aggregated with another defined benefit plan.* In the case of a plan described in paragraph (g)(1) of this section that is not described in paragraph (g)(2) of this section (for example, an eligible cash balance plan that is aggregated with another defined benefit plan that is not an eligible cash balance plan or a plan that uses an eligible cash balance formula with a traditional defined benefit plan formula as described in § 1.411(b)–2(b)(2)(iii)(C)), the plan would satisfy the requirements of § 1.401(a)(4)–9(b)(2)(v)(D) by treating the additions to the hypothetical account that are included in the rate of benefit accrual under the rules of § 1.411(b)–2(b)(2)(iii)(A) as allocations under a defined contribution plan.

Par. 3. Section 1.401(a)(4)–9 is amended by:

1. Amending paragraph (b)(2)(v) by removing the language ''For plan years'' and adding in its place ''Except as provided in paragraph (b)(2)(vi) of this section, for plan years''.

2. Adding paragraph (b)(2)(vi).

The addition reads as follows:

§ 1.401(a)(4)–9 Plan aggregation and restructuring.

* * * * *

(b) * * *

(2) * * *

(vi) *Special rules for cash balance plans aggregated with defined contribution plans*—(A) *In general.* In the case of a DB/DC plan where the defined benefit plan (or any portion thereof) satisfies the requirements of section 411(b)(1)(H) using the rate of benefit accrual determined pursuant to the rules of § 1.411(b)–2(b)(iii) for eligible cash balance plans, the DB/DC plan is permitted to demonstrate satisfaction of the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits only if—

(*1*) The plan would satisfy the requirements of paragraph (b)(2)(v) of this section if the additions to the hypothetical account that are included in the rate of benefit accrual under the rules of § 1.411(b)–2(b)(2)(iii)(A) are treated as allocations under a defined contribution plan; or

(*2*) The plan is described in paragraph (b)(2)(vi)(B) of this section (regarding eligible cash balance plans aggregated only with defined contribution plans).

(B) *Special rule for cash balance plans aggregated with defined contribution plans that are not aggregated with other defined benefit plans.* A DB/DC plan is described in this paragraph (b)(2)(vi)(B) if the DB/DC plan satisfies the following conditions—

(*1*) All defined benefit plans that are included in the DB/DC plan satisfy the requirements of section 411(b)(1)(H) using the rate of benefit accrual determined pursuant to the rules of § 1.411(b)–2(b)(iii) for eligible cash balance plans; and

(*2*) The DB/DC plan would satisfy the requirements of § 1.401(a)(4)–8(b)(1)(i)(B)(*1*) or (*2*) (regarding broadly available allocation rates or certain age-based allocation rates) if the additions to the hypothetical account that are included in the rate of benefit accrual under the rules of § 1.411(b)–2(b)(2)(iii)(A) are treated as allocations under a defined contribution plan.

Par. 4. Proposed § 1.411(b)–2 published at 53 FR 11876 on April 11, 1988, is revised to read as follows.

§ 1.411(b)–2 Reductions of accruals or allocations because of attainment of any age.

(a) *In general*—(1) *Overview.* Section 411(b)(1)(H) provides that a defined benefit plan does not satisfy the minimum vesting standards of section 411(a) if, under the plan, benefit accruals on behalf of a participant are ceased or the rate of benefit accrual on behalf of a participant is reduced because of the participant's attainment of any age. Section 411(b)(2) provides that a defined contribution plan does not satisfy the minimum vesting standards of section 411(a) if, under the plan, allocations to a participant's account are ceased or the rate of allocation to a participant's account is reduced because of the participant's attainment of any age. Paragraph (b) of this section provides general rules for defined benefit plans. Paragraph (c) of this section provides general rules for defined contribution plans. Paragraph (d) of this section provides rules applying this section to optional forms of benefit, ancillary benefits, and other rights or features under defined benefit and defined contribution plans. Paragraph (e) of this section provides rules coordinating the requirements of this section with certain other qualification requirements. Paragraph (f) of this section contains effective date provisions.

(2) *Attainment of any age.* For purposes of sections 411(b)(1)(H), 411(b)(2), and this section, a participant's attainment of any age means the participant's growing older. Thus, the rules of sections 411(b)(1)(H), 411(b)(2), and this section apply regardless of whether a participant is younger than, at, or older than normal retirement age.

(b) *Defined benefit plans*—(1) *In general*—(i) *Requirement.* A defined benefit plan does not satisfy the requirements of section 411(b)(1)(H) if a participant's rate of benefit accrual is reduced, either directly or indirectly, because of the participant's attainment of any age. A reduction in a participant's rate of benefit accrual includes any discontinuance in the participant's accrual of benefits or cessation of participation in the plan.

(ii) *Definition of normal form.* For purposes of this paragraph (b), the normal form of benefit (also referred to as the normal form) means the form under which payments to the participant under the plan are expressed under the plan formula, prior to adjustment for form of benefit.

(2) *Rate of benefit accrual*—(i) *Rate of benefit accrual before normal retirement age.* For purposes of this paragraph (b), except as provided in paragraph (b)(2)(iii) of this section, a participant's rate of benefit accrual for any plan year that ends before the participant attains normal retirement age is the excess (if any) of—

(A) The participant's accrued normal retirement benefit at the end of the plan year; over

(B) The participant's accrued normal retirement benefit at the end of the preceding plan year.

(ii) *Rate of benefit accrual after normal retirement age.* In the case of a plan for which the rate of benefit accrual before normal retirement age is determined under paragraph (b)(2)(i) of this section, except as provided in paragraph (b)(4)(iii)(C) of this section, a participant's rate of benefit accrual for the plan year in which the participant attains normal retirement age or any later plan year (taking into account the provisions of section 411(b)(1)(H)(iii)(II)) is the excess (if any) of—

(A) The annual benefit to which the participant is entitled at the end of the plan year, determined as if payment commences at the end of the plan year in the normal form (or the straight life annuity that is actuarially equivalent to the normal form if the normal form is not an annual benefit that does not decrease during the lifetime of the participant); over

(B) The annual benefit to which the participant was entitled at the end of the preceding plan year, determined as if payment commences at the later of normal retirement age or the end of the preceding plan year in the normal form (or the straight life annuity that is actuarially equivalent to the normal form if the normal form is not an annual benefit that does not decrease during the lifetime of the participant).

(iii) *Rate of benefit accrual for eligible cash balance plans*—(A) *General rule.* For purposes of this paragraph (b), in the case of an eligible cash balance plan, a participant's rate of benefit accrual for a plan year is permitted to be determined as the addition to the participant's hypothetical account for the plan year, except that interest credits added to the hypothetical account for the plan year are disregarded to the extent the participant had accrued the right to those interest credits as of the close of the preceding plan year as described in paragraph (b)(2)(iii)(B)(*2*) of this section.

(B) *Eligible cash balance plans.* For purposes of this section, a defined benefit plan is an eligible cash balance plan for a plan year if it satisfies each of the following requirements for current accruals under the plan for that plan year—

(1) Plan design. The normal form of benefit is an immediate payment of the balance in a hypothetical account (without regard to whether such an immediate payment is actually available under the plan).

(2) Right to future interest. With respect to a participant's hypothetical account balance, the participant has accrued the right to annual (or more frequent) interest credits to be added to the hypothetical account for all future periods without regard to future service at a reasonable rate of interest that is not reduced, either directly or indirectly, because of the participant's attainment of any age. A plan is treated as not satisfying the requirement of this paragraph (b)(2)(iii)(B)(*2*) if it provides for any adjustment for benefit distributions described in paragraph (b)(4) of this section.

(3) Plan amendments adopting cash balance formula. In the case of a plan amendment that has been amended to adopt a cash balance formula (as described in paragraphs (b)(2)(iii)(B)(*1*) and (*2*) of this section) for a participant, the plan as amended satisfies the requirements of either paragraph (b)(2)(iii)(D) or (E) of this section.

(C) *Plans with mixed benefit formulas*—(*1*) *Eligible cash balance formula.* If a portion of the plan formula under a defined benefit plan would satisfy the requirements to be an eligible cash balance plan if it were the only formula under the plan, then, for purposes of this section, such portion of the plan formula is referred to as an eligible cash balance formula and the other portion of the plan formula is referred to as a traditional defined benefit formula. If the eligible cash balance formula and the traditional defined benefit formula interact in a manner described in paragraph (b)(2)(iii)(C)(*2*), (*3*), or (*4*) of this section for current and future accruals under the plan, then, for purposes of determining whether the plan satisfies section 411(b)(1)(H), the plan is permitted to be treated as two separate plans, one of which is an eligible cash balance plan and the other of which is not, but only if each such plan would satisfy section 410(a)(2). Thus, such a plan satisfies the requirements of section 411(b)(1)(H) if the eligible cash balance formula satisfies the requirements of paragraph (b)(1) of this section with the participant's rate of

benefit accrual determined under paragraph (b)(2)(iii)(A) of this section and the portion of the plan's formula that is a traditional defined benefit formula satisfies the requirements of paragraph (b)(1) of this section with the participant's rate of benefit accrual determined under paragraph (b)(2)(i) or (ii) of this section, as applicable. If the eligible cash balance formula and the traditional defined benefit formula interact in a manner other than as set forth in paragraphs (b)(2)(iii)(C)(*2*), (*3*), or (*4*) of this section, the plan is not treated as an eligible cash balance plan for any portion of the plan formula.

(*2*) *Plans with additive formulas.* A plan is described in this paragraph (b)(2)(iii)(C)(*2*) if the participant's benefit is based on the sum of accruals under two different formulas, one of which is an eligible cash balance formula and the other of which is not.

(*3*) *Plans with greater of formulas.* A plan is described in this paragraph (b)(2)(iii)(C)(*3*) if the plan provides a benefit for a participant equal to the greater of the benefit determined under two or more formulas under the plan for a plan year, one of which is an eligible cash balance formula and another of which is not.

(*4*) *Different formulas for different participants.* A plan is described in this paragraph (b)(2)(iii)(C)(*4*) if some participants are eligible for accruals only under an eligible cash balance formula and the remaining participants are eligible for accruals only under a traditional defined benefit formula or a combination of a traditional defined benefit formula or eligible cash balance formula described in paragraphs (b)(2)(iii)(C)(*2*) and (*3*) of this section.

(D) *Plan amendment adopting eligible cash balance formula using a sum of formula.* A plan satisfies this paragraph (b)(2)(iii)(D) only if for all periods after the amendment becomes effective the plan provides benefits that are not less than the sum of the benefits accrued as of the later of the date the amendment becomes effective or the date the amendment is adopted, plus the benefits provided by the participant's hypothetical account under the eligible cash balance formula.

(E) *Plan amendment adopting eligible cash balance formula using an opening account balance*—(*1*) *Calculation of opening account balance.* A plan satisfies this paragraph (b)(2)(iii)(E) only if the balance in the participant's hypothetical account, determined immediately after the amendment becomes effective, is not less than the actuarial present value of the participant's accrued benefit payable in the normal form of benefit, determined as of the later of the date the amendment becomes effective or the date the amendment is adopted, with such present value determined using reasonable actuarial assumptions. For this purpose, the actuarial assumptions are not reasonable if they include an interest rate that increases, either directly or indirectly, because of a participant's attainment of any age. The actuarial assumptions do not fail to be reasonable merely because pre-retirement mortality is not taken into account.

(2) Bifurcation for purposes of determining rate of benefit accrual. If a plan satisfies the requirements of paragraph (b)(2)(iii)(E)(*1*), only the portion of the participant's hypothetical account balance in excess of the actuarial present value of the participant's accrued benefit payable in the normal form of benefit is treated as an addition to the participant's hypothetical account balance for the plan year for purposes of determining the participant's rate of benefit accrual under paragraph (b)(2)(iii)(A) of this section.

(3) Treatment of employees past normal retirement age. In addition, a plan does not satisfy this paragraph (b)(2)(iii)(E) if the opening balance for a participant who has attained normal retirement age is less than the balance that would apply if the participant were at his or her normal retirement age.

(iv) *Determination of rate of benefit accrual*—(A) *In general.* A participant's rate of benefit accrual for a plan year can be determined as a dollar amount. Alternatively, if a plan's formula bases a participant's accruals on current compensation, then a participant's rate of benefit accrual can be determined as a percentage of the participant's current compensation. For example, for an accumulation plan (as defined in § 1.401(a)(4)–12), the participant's rate of benefit accrual under paragraph (b)(2)(i) of this section can be determined as the excess of the accrued portion of the participant's normal retirement benefit at the end of the plan year over the accrued portion of the participant's normal retirement benefit at the end of the preceding plan year, divided by compensation taken into account under the plan for the plan year. Likewise, if a plan's formula bases a participant's accruals on average compensation, then a participant's rate of benefit accrual can be determined as a percentage of that measure of the participant's average compensation. For a plan that determines benefits as a percentage of average annual compensation (as defined in § 1.401(a)(4)–3(e)(2)), the rate of benefit accrual under paragraph (b)(2)(i) of this section is determined as the excess of the accrued portion of the participant's normal retirement benefit at the end of the plan year divided by average annual compensation taken into account under the plan at the end of the plan year, over the accrued portion of the participant's normal retirement benefit at the end of the preceding plan year divided by average annual compensation taken into account under the plan at the end of such preceding plan year. A plan is permitted to determine the participant's rate of benefit accrual as a percentage of the participant's current or average compensation only if compensation under the plan is determined without regard to attainment of any age.

(B) *Benefits included in rate of benefit accrual.* For purposes of determining a participant's rate of benefit accrual, only benefits that are included in a participant's accrued benefit are taken into account. Thus, for example, a participant's rate of benefit accrual does not take into account benefits such as the benefits described in paragraph (d)(3) of this section (relating to qualified disability benefits, social security supplements, and early retirement benefits).

(v) *Examples.* The following examples illustrate the application of this paragraph (b)(2). In each of the examples, normal retirement age is 65. The examples are as follows:

Example 1. Plan L is a defined benefit plan under which the normal form of benefit is a monthly straight life annuity commencing at normal retirement age (or the date of actual retirement, if later) equal to $30 times the participant's years of service. For purposes of this section, a participant's rate of benefit accrual for any plan year is $30.

Example 2. (i) Plan M is a defined benefit plan under which the normal form of benefit is an annual straight life annuity commencing at normal retirement age (or the date of actual retirement, if later) equal to 1% of the average of a participant's highest 3 consecutive years of compensation times the participant's years of service.

(ii) For purposes of this section, a participant's rate of benefit accrual for any plan year can be expressed as a dollar amount. Alternatively, a participant's rate of benefit accrual for a plan year can be expressed as 1% of the participant's highest 3 consecutive years of compensation (determined using the same rules applicable to determining compensation under the plan for purposes of computing the normal form of benefit), provided that the definition of compensation used for this purpose is determined without regard to the attainment of any age. A participant's rate of benefit accrual cannot be determined as a percentage of any other measure of compensation or average compensation.

(iii) If Plan M were to provide that compensation earned after the attainment of

age 65 is not taken into account in determining average compensation or were otherwise to determine compensation in a manner that depends on a participant's age, then, for purposes of this section, a participant's rate of benefit accrual would have to be expressed as a dollar amount, and could not be expressed as a percentage of any measure of compensation or average compensation.

Example 3. (i) Plan N is a defined benefit plan under which the normal form of benefit is an immediate payment of the balance in a participant's hypothetical account. A compensation credit equal to 6% of each participant's wages for the year is added to the hypothetical account of a participant who is an employee. At the end of each plan year, the hypothetical account is credited with interest based on the applicable interest rate under section 417(e), as provided under the plan. All participants accrue the right to receive interest credits on their hypothetical account in the future regardless of performance of services in the future, including after normal retirement age.

(ii) Under paragraph (b)(2)(iii)(B) of this section, Plan N satisfies the requirements to be an eligible cash balance plan. Participant A's compensation for a plan year is $40,000. The compensation credit for Participant A allocated to A's hypothetical account for that plan year is $2,400. Because Plan N is an eligible cash balance plan, the rate of benefit accrual for Participant A is permitted to be determined as the addition to Participant A's hypothetical account for the plan year, disregarding interest credits. Therefore, Participant A's rate of benefit accrual is equal to $2,400, or 6% of wages.

Example 4. (i) The facts are the same as in *Example 3,* except that the cash balance formula under Plan N is the result of a plan amendment. Under the plan, as amended, the benefits equal the sum of—

(1) 1% of the average of the participant's highest 3 consecutive years of base salary times years of service, but disregarding service and salary after the effective date of the amendment, in a normal form of benefit that is a straight life annuity commencing at normal retirement age (or the date of actual retirement, if later); and

(2) the participant's hypothetical account under the same cash balance formula in *Example 3* that applies after the effective date of the amendment, in a normal form of benefit expressed as an immediate payment of the balance of the participant's hypothetical account.

(ii) Under paragraph (b)(2)(iii)(B)(*3*) of this section, the plan is an eligible cash balance plan if the plan satisfies the requirements of paragraph (b)(2)(iii)(D) or (E) of this section. The plan's formula is described in paragraph (b)(2)(iii)(D) of this section. Accordingly, the portion of the plan formula that provides for compensation credits on a participant's hypothetical account is an eligible cash balance formula under paragraph (b)(2)(iii)(B) of this section. Therefore, a participant's rate of benefit accrual under the eligible cash balance formula is permitted to be determined as the addition to the participant's hypothetical account for the plan year, disregarding interest credits. Participant B's base salary for the year is $50,000. The compensation credit for Participant B credited to B's hypothetical account for the year is $3,000. The rate of benefit accrual under the eligible cash balance formula for Participant B is equal to $3,000, or 6% of base salary.

Example 5. (i) The facts are the same as in *Example 3,* except that Plan N is a defined benefit plan that is converted to a cash balance plan by the adoption of a plan amendment, effective at the beginning of the next plan year, establishing an opening hypothetical account for each participant with an accrued benefit under the plan prior to conversion. Prior to conversion, Plan N provided a benefit equal to 1% of the average of a participant's highest 3 consecutive years of compensation times years of service. Effective as of the date of the conversion, hypothetical accounts are established equal to the present value of a participant's accrued benefit using section 417(e) interest and reasonable mortality assumptions (except no pre-retirement mortality is used). Under the cash balance portion of the formula, compensation and interest credits are made as described in *Example 3.*

(ii) Under paragraph (b)(2)(iii)(B)(*3*) of this section, the plan is an eligible cash balance plan only if the plan satisfies the requirements of paragraph (b)(2)(iii)(D) or (E) of this section. The plan's formula is described in paragraph (b)(2)(iii)(E) of this section. Accordingly, the portion of the plan formula that provides for compensation credits on a participant's hypothetical account is an eligible cash balance formula. The rate of benefit accrual for a participant is therefore permitted to be determined as the addition to the participant's hypothetical account for the plan year, disregarding interest credits. In addition, under paragraph (b)(2)(iii)(E) of this section, because the opening hypothetical account balance is equal to the actuarial present value of the participant's accrued benefit, that balance is not treated as an addition for the plan year. The result would not be different if the opening accounts were established using another interest rate or another mortality assumption if the actuarial assumptions were reasonable. Participant C's wages for the year are $60,000. The compensation credit allocated to C's hypothetical account for the year is $3,600. The rate of accrual under the eligible cash balance formula for C is equal to $3,600, or 6% of compensation.

Example 6. (i) The facts are the same as in *Example 5,* except that Plan N provides for only new participants and participants who are less than age 55 at the time of the conversion to be eligible for benefits under the cash balance formula. Accordingly, participants who are age 55 or older at the time of the conversion are only eligible for the benefit payable under the plan formula in effect before the conversion (1% of the participant's highest 3 consecutive years of compensation times years of service) taking into account compensation and service after the conversion.

(ii) Because Plan N provides benefits based on a mixed formula under paragraph (b)(2)(iii)(C) of this section, Plan N is permitted under paragraph (b)(2)(iii)(C)(*1*) of this section to be treated as two separate plans for purposes of section 411(b)(1)(H), one of which is an eligible cash balance plan and the other of which is not, but only if each plan would satisfy section 410(a)(2). No portion of Plan N can be treated as an eligible cash balance plan because the portion of Plan N that would otherwise be an eligible cash balance plan would fail to satisfy section 410(a)(2) as a result of having a maximum age of 55 for individuals who are participants at the time of the conversion.

Example 7. (i) The facts are the same as in *Example 5,* except that Plan N provides for participants to receive the greater of the benefit payable under the cash balance formula or the benefit payable under the plan formula in effect before the conversion (1% of the participant's highest 3 consecutive years of compensation times years of service) taking into account compensation and service after the conversion.

(ii) Because Plan N provides benefits based on the greater of the amount payable under two different formulas, under paragraph (b)(2)(iii)(C)(*4*) of this section, Plan N is tested for satisfaction of the requirements of section 411(b)(1)(H) and this paragraph (b) by separately testing the eligible cash balance formula using a rate of benefit accrual equal to compensation credits of 6% of compensation and the traditional defined benefit formulas using a rate of benefit accrual equal to 1% of highest 3 consecutive years of compensation.

(3) *Reduction that is directly or indirectly because of a participant's attainment of any age*—(i) *Reduction in rate of benefit accrual that is directly because of a participant's attainment of any age.* A plan provides for a reduction in the rate of benefit accrual that is directly because of a participant's attainment of any age for any plan year if, under the terms of the plan, any participant's rate of benefit accrual for the plan year would be higher if the participant were younger. Thus, a plan fails to satisfy section 411(b)(1)(H) and this paragraph (b) if, under the terms of the plan, the rate of benefit accrual for any individual who is or could be a participant under the plan would be lower solely as a result of the individual being older.

(ii) *Reduction in rate of benefit accrual that is indirectly because of a participant's attainment of any age*—(A) *In general.* A plan provides for a reduction in the rate of benefit accrual that is indirectly because of a participant's attainment of any age for any plan year if any participant's rate of benefit accrual for the plan year would be higher if the participant were to have a different characteristic which is a proxy for being younger, based on the all of relevant facts and circumstances. Thus, a plan fails to satisfy section 411(b)(1)(H) and this paragraph (b) if the rate of benefit accrual for any individual who is or could be a participant under

the plan would be lower solely as a result of such individual having a different characteristic which is a proxy for being older, based on all of the relevant facts and circumstances.

(B) *Permissible limitations.* A reduction in a participant's rate of benefit accrual is not indirectly because of the attainment of any age in violation of section 411(b)(1)(H) solely because of a positive correlation between attainment of any age and a reduction in the rate of benefit accrual. In addition, a defined benefit plan does not fail to satisfy section 411(b)(1)(H) and this paragraph (b) solely because, on a uniform and consistent basis without regard to a participant's age, the plan limits the amount of benefits a participant may accrue under the plan, limits the number of years of service or years of participation taken into account for purposes of determining the accrual of benefits under the plan (credited service), or provides for a reduced rate of accrual for credited service in excess of a fixed number of years. For this purpose, a limitation that is expressed as a percentage of compensation (whether averaged over a participant's total years of credited service for the employer or over a shorter period) is treated as a permissible limitation on the amount of benefits a participant may accrue under the plan.

(iii) *Examples.* The provisions of this paragraph (b)(3) may be illustrated by the following examples. In each of the examples, except as specifically indicated, normal retirement age is 65, the plan contains no limitations on the maximum amount of benefits the plan will pay to any participant (other than the limitations imposed by section 415), on the maximum number of years of credited service taken into account under the plan, or on the compensation used for purposes of determining the amount of any participant's accrued benefit (other than the limitation imposed by section 401(a)(17)), and the plan uses the following actuarial assumptions in determining actuarial equivalence: a 7.5% rate of interest and the 83 GAM (male) mortality table. The examples are as follows:

Example 1. (i) Plan M provides an accrued benefit of 1% of a participant's average annual compensation, multiplied by the participant's years of credited service under the plan payable in the normal form of a straight life annuity commencing at normal retirement age or the date of actual retirement if later. Plan M suspends payment of benefits for participants who work past normal retirement age, in accordance with section 411(a)(3)(B) and 29 CFR 2530.203–3 of the regulations of the Department of Labor, and does not provide for an actuarial increase in computing the accrued benefit for participants who commence benefits after normal retirement age.

(ii) The rate of benefit accrual for all participants in Plan M is 1% of average annual compensation. Thus, there could be no participant who would have a rate of benefit accrual that is greater than 1% if the individual were younger. Accordingly, there is no reduction in the rate of benefit accrual because of the individual's attainment of any age under this paragraph (b)(3) and Plan M satisfies the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 2. (i) Assume the same facts as in *Example 1,* except that Plan M provides that not more than 35 years of credited service are taken into account in determining a participant's accrued benefit under the plan. Participant A became a participant in the plan at age 25 and worked continuously in covered service under Plan M until A retires at age 70.

(ii) The rate of benefit accrual under Plan M is 1% of average annual compensation for participants who have up to 35 years of credited service and zero for participants who have more than 35 years of credited service. Because a reduction from a rate of benefit accrual from 1% of average annual compensation to zero is based on service, and would not be affected if any participant were younger (with the same number of years of service), Plan M does not provide for a reduction in the rate of benefit accrual that is directly because of an individual's attainment of any age as provided in paragraph (b)(3)(i) of this section. Under paragraph (b)(3)(ii) of this section, a uniform limit on the number of years of service taken into account for purposes of determining the accrual of benefits under the plan is not considered to be a reduction in the rate of benefit accrual that is indirectly because of a participant's attainment of any age.

(iii) Upon A's retirement at age 70, A will have an accrued benefit under the plan's benefit formula of 35% of A's average annual compensation at age 70 (1% per year of credited service × 35 years of credited service). Plan M will not fail to satisfy the requirements of section 411(b)(1)(H) and this paragraph (b) merely because the plan provides that the final 10 years of A's service under the plan are not taken into account in determining A's accrued benefit. The result would be the same if Plan M provided that no participant could accrue a benefit in excess of 35% of the participant's average annual compensation.

Example 3. Assume the same facts as in *Example 1,* except that Plan M provides that a participant's years of service after attainment of social security retirement age are disregarded for purposes of determining a participant's accrued benefit under the plan. Because a participant who is covered under the plan after social security retirement age would have a higher rate of benefit accrual if he or she were younger (and had not attained social security retirement age), that participant's rate of benefit accrual is reduced directly because of the participant's attainment of any age under paragraph (b)(3)(i) of this section. Consequently, Plan M fails to satisfy the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 4. (i) Assume the same facts as in *Example 1,* except that Plan M provides that a participant's compensation after the attainment of age 62 is not taken into account in determining the participant's accrued benefit under the plan.

(ii) Accordingly, the plan's measure of average compensation cannot be used in determining a participant's rate of benefit accrual because it does not apply to participants in a uniform manner that is independent of age. Because a participant who is or could be covered under Plan M after the attainment of age 62 whose compensation increases after age 62 would have a higher rate of benefit accrual if the participant were younger than age 62, that participant's rate of benefit accrual is reduced directly because of the participant's attainment of any age under paragraph (b)(3)(i) of this section. This reduction occurs whether or not there is any actual participant in Plan M who has attained age 62 or whose average annual compensation has increased after age 62. Consequently, the plan fails to satisfy the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 5. (i) Assume the same facts as in *Example 1,* except that Plan M is amended to cease all benefit accruals for all participants and is subsequently terminated.

(ii) After all benefit accruals have ceased, the rate of benefit accrual of all participants is zero. Thus, there could not be any participant who would have a rate of benefit accrual that is greater than zero if the participant were younger, so that there is no reduction in the rate of benefit accrual that is because of the individual's attainment of any age under paragraph (b)(3) of this section. Accordingly, Plan M satisfies the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 6. (i) Employer Y maintains Plan O, a defined benefit plan that provides an accrued benefit of 1% of a participant's highest 5 consecutive years of compensation, multiplied by the sum of the participant's age and years of service, payable in the normal form of a straight life annuity commencing at normal retirement age or the date of actual retirement if later. Plan O provides that a participant's years of service after the sum of a participant's age and years of service reach a total of 55 are disregarded for purposes of determining the normal retirement benefit. Participant C is 45 years old and has 10 years of credited service as of the beginning of a plan year. Thus, for that plan year, C's rate of benefit accrual is 1% of C's highest 5 consecutive years of compensation.

(ii) If C were younger, for example age 39 (with the same years of service), C would have a rate of benefit accrual of 2% of C's highest 5 consecutive years of compensation. Accordingly, C's rate of benefit accrual is reduced directly because of C's attainment of any age as provided in this paragraph (b)(3)(i). Consequently, Plan O fails to satisfy the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 7. (i) Plan P is a defined benefit plan that provides for a normal retirement benefit of 40% of a participant's average compensation for the participant's highest 3 consecutive years of compensation, payable

in the normal form of a straight life annuity commencing at normal retirement age or the date of actual retirement if later. If a participant separates from service prior to normal retirement age, Plan P provides a benefit equal to an amount that bears the same ratio to 40% of such average compensation as the participant's actual number of years of service bears to the number of years of service the participant would have if the participant's service continued to normal retirement age. As of the end of a plan year, participant D is 45 years old and has completed 20 years of service, and participant E is 41 years old and has completed 1 year of credited service. Thus, D's rate of benefit accrual for the plan year may be determined as 1% of compensation for D's highest 3 consecutive years, and E's rate of benefit accrual for the plan year may be determined as 1.6% of compensation for E's highest 3 consecutive years.

(ii) If D were younger than age 45 (with 20 years of service and the same compensation history), D's rate of benefit accrual for the plan year would not be greater than 1% of compensation for D's highest 3 consecutive years. Thus, there is no reduction in the rate of benefit accrual for D that is directly because of the individual's attainment of any age as provided in paragraph (b)(3)(i) of this section. In addition, there are no facts and circumstances indicating that D's rate of benefit accrual is reduced indirectly because of D's attainment of any age as provided in paragraph (b)(3)(ii) of this section. Likewise, if E were younger than age 41 (with 1 year of service and the same compensation history), E's rate of benefit accrual for the plan year would not be greater than 1.6% of compensation for E's highest 3 consecutive years. Thus, there is no reduction in the rate of benefit accrual for E that is directly because of the individual's attainment of any age as provided in paragraph (b)(3)(i) of this section. In addition, there are no facts and circumstances indicating that E's rate of benefit accrual is reduced indirectly because of E's attainment of any age under paragraph (b)(3)(ii) of this section. These same results would apply for any possible participant in Plan P. Accordingly, Plan P satisfies the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 8. (i) Plan A is a defined benefit plan that provides for an accrued benefit of 2% of a participant's average compensation for the participant's highest 3 consecutive years of compensation for the first 20 years of service, plus 1% of such average compensation for years in excess of 20, payable in the normal form of a straight life annuity commencing at normal retirement age or the date of actual retirement if later. However, if a participant separates from service prior to normal retirement age, Plan P provides a benefit equal to an amount that bears the same ratio to the total percentage of such average compensation that the participant would have if service continued to normal retirement age as the participant's actual number of years of service bears to the number of years of service the participant would have if the participant's service continued to normal retirement age. For participants who work past normal retirement age, Plan A provides a benefit equal to 2% per year for years of service not in excess of 20, plus the following rate for years of service in excess of 20: the sum of 40% plus the product of 1% times service in excess of 20 years, with that sum divided by total service to the end of the current plan year. As of the beginning of the plan year beginning January 1, 2008, participant N is 64 years old and has completed 20 years of service, and participant O is 70 years old and has completed 20 years of credited service. Thus, N's rate of benefit accrual for that plan year may be determined as 1.95% of compensation for N's highest 3 consecutive years (2% for 20 years, plus 1% for 1 year, with that sum divided by 21 equals 1.95%), and O's rate of benefit accrual for that plan year also may be determined 1.95% of compensation for O's highest 3 consecutive years (40% for the first 20 years, plus 1% for service to the end of 2008, with that sum divided by 21 equals 1.95%).

(ii) If O were younger than age 70 (with 20 years of service and the same compensation history), O's rate of benefit accrual for the plan year would not be greater than 1.95% of compensation for O's highest 3 consecutive years. The same conclusion applies for any other possible participant. Thus, Plan A satisfies paragraph (b)(3)(ii) of this section.

(iii) However, if Plan A were instead to provide a rate of benefit accrual for service after normal retirement age equal to 2% for years of service not in excess of 20, plus 1% for service in excess of 20, Plan A would fail to satisfy paragraph (b)(3)(ii) of this section. For example, O's rate of benefit accrual would be 1% for 2008, whereas N's rate of benefit accrual would be 1.95% for 2008, even though the only difference between O and N is that N is younger.

Example 9. (i) The facts are similar to *Example 8,* except that the formula is 1% of a participant's average compensation for the participant's highest 3 consecutive years of compensation for the first 20 years, plus 2% of such average compensation for years in excess of 20, payable in the normal form of a straight life annuity commencing at normal retirement age or the date of actual retirement if later. As in *Example 8,* if a participant separates from service prior to normal retirement age, Plan P provides a benefit equal to an amount that bears the same ratio to the total percentage of such average compensation that the participant would have if service continued to normal retirement age as the participant's actual number of years of service bears to the number of years of service the participant would have if the participant's service continued to normal retirement age. Further, similar to the facts in *Example 8*(iii) of this paragraph (b)(3)(iii), for participants who work past normal retirement age, Plan A provides a benefit equal to 1% per year for years of service not in excess of 20, plus 2% per year for years of service in excess of 20. As of the beginning of the plan year beginning January 1, 2008, participant K is 45 years old and has completed 10 years of service, and participant M is 55 years old and has completed 10 years of credited service. Thus, K's rate of benefit accrual for the plan year may be determined as 1.33% of compensation for K's highest 3 consecutive years (1% for 20 years, plus 2% for 10 more years, with the sum divided by 30 equals 1.33%), and M's rate of benefit accrual for the plan year may be determined as 1% of compensation for O's highest 3 consecutive years (1% for 20 years, with that amount divided by 20 equals 1%).

(ii) If M were younger than age 55 (with 10 years of service and the same compensation history), M's rate of benefit accrual for the plan year would be greater than 1% of compensation for M's highest 3 consecutive years. (Plan A also provides for an impermissible reduction in the rate of benefit accrual for a participant whose service continues after normal retirement age in a manner that is comparable to *Example 8*(iii) of this paragraph (b)(3)(iii).) Thus, Plan A fails to satisfy paragraph (b)(3)(ii) of this section.

Example 10. (i) Employer Z maintains Plan Q, a defined benefit plan that provides an accrued benefit of $40 per month multiplied by a participant's years of credited service. Participant F attains normal retirement age of 65 and continues in the full time service of Z. At age 65, F has 30 years of credited service under the plan and could receive a normal retirement benefit of $1,200 per month ($40 X 30 years) if F retires. The plan suspends benefits for participants who work past normal retirement age, in accordance with section 411(a)(3)(B) and 29 CFR 2530.203–3 of the regulations of the Department of Labor, and does not provide for any actuarial increase for employment past normal retirement age. Accordingly, the plan does not pay F's accrued benefit while F remains in the full time service of Z and does not provide for an actuarial adjustment of F's accrued benefit because of delayed payment. For example, if F retires at age 67, after completing 2 additional years of credited service for Z, F will receive a benefit of $1,280 per month ($40 × 32 years) commencing at age 67.

(ii) Under Plan Q, the rate of accrual for all participants is $40 per month. Thus, there could not be any participant who would have a rate of benefit accrual that is greater than $40 per month if the participant were younger, so that there is no reduction in the rate of benefit accrual that is because of the individual's attainment of any age under paragraph (b)(3)(i) of this section. Accordingly, Plan Q satisfies the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 11. (i) Assume the same facts as in *Example 10,* except that the plan provides that the amount of F's benefit at normal retirement age will be actuarially increased for delayed retirement (even though the plan suspends benefits for participants who work past normal retirement age), and this actuarially increased benefit will be paid if it exceeds the plan formula, but no actuarial increase is provided for any amount that is accrued after normal retirement age. The plan takes this actuarial increase into account as part of the rate of benefit accrual in plan years ending after F's attainment of normal retirement age, as provided under paragraph (b)(2)(ii) of this section.

(ii) Under section 411(b)(1)(H) and this paragraph (b), F's employment past normal retirement age cannot cause F's rate of benefit accrual for any year to be less than $40 for the year. Plan Q satisfies this requirement for the first year after normal retirement age because, under the plan, F is entitled to receive, upon retirement at the end of the year when F is age 66, an actuarially increased benefit of $1,344.68 per month, so that the rate of benefit accrual for the year is $144.68 (which is $1,344.68 minus $1,200).

(iii) Further, for the second year past normal retirement age ending when F is age 67, F must be entitled to a rate of benefit accrual of at least $149.50 per month, which is the highest rate of benefit accrual under Plan Q for any younger participant with 32 years of service at the end of the year. (In these facts, all participants have a rate of accrual of $40 until normal retirement age and a participant who is age 66 with 32 years of service at the end of the year would have a rate of benefit accrual of $149.50 due to an actuarial increase on an age 65 benefit of $1,240 per month.) Under the plan, F is entitled to receive, upon retirement at age 67, an actuarially increased benefit of $1,511.39 per month. Plan Q satisfies the requirement that F be entitled to the highest rate of benefit accrual provided to any younger participant because the rate of benefit accrual in that year ($1,511.39 minus $1,344.68 equals $166.71) is not less than what the rate would be for F if F were younger. These same results would apply for any possible participant in Plan Q. Accordingly, Plan Q satisfies the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 12. (i) Employer Z maintains Plan R, a defined benefit plan that provides an accrued benefit of 2% of the average of a participant's high 3 consecutive years of compensation multiplied by the participant's years of credited service under the plan. Participant G, who has attained normal retirement age (age 65) under the plan, continues in the full time service of Z. At normal retirement age, G has average compensation of $40,000 for G's high 3 consecutive years and has 10 years of credited service under the plan. Thus, at normal retirement age, G is entitled to receive an annual normal retirement benefit of $8,000 ($40,000 × .02 × 10 years). Payment of G's retirement benefit is not suspended, and the plan provides that retirement benefits that commence after a participant's normal retirement age are actuarially increased for late retirement. Under the plan provision relating to actuarial increase, the actuarial increase for the plan year is made to the benefit that would have been paid had the participant retired as of the end of the preceding plan year. The plan then provides the greater of this actuarially increased benefit and benefits under the plan formula based on continued service, thereby including the actuarial increase in the rate of benefit accrual in plan years ending after G's attainment of normal retirement age, as provided in paragraph (b)(2)(ii) of this section. The foregoing is illustrated in the following table with respect to certain years of credited service performed by G after attaining normal retirement age 65. (Certain numbers may not total due to rounding.)

Age at start of plan year	Years of service at start of plan year	Average pay for high 3 consecutive years at start of plan year	Plan formula at start of plan year (.02 times column 2 times column 3)	Additional accruals for the plan year under plan formula (column 4 minus column 4 for prior year)	Annual benefit, as actuarially increased (column 8 from prior year actuarially increased)	Actuarial increase on the benefit at prior age (column 6 minus column 8 for prior year)	Annual benefit to which C is entitled at start of year (greater of column 4 and column 6)	Annual benefit as percent of average pay column 8 ÷ column 3) (percent)	Rate of benefit accrual (column 9 less column 9 for prior year) (percent)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
65	10	$40,000	$8,000	n/a	n/a	n/a	$8,000	20	2
66	11	42,000	9,240	$1,240	$8,964	964	9,240	22	2
67	12	58,000	13,920	4,680	10,386	1,142	13,920	24	2
68	13	60,000	15,600	1,680	15,697	1,777	15,697	26.16	2.16
69	14	66,000	18,480	2,880	17,762	2,065	18,480	28.1	2
70	15	68,000	20,400	1,920	20,998	2,509	20,989	30.87	2.87

(ii) In the year G is 69 at the beginning of the year, G's rate of benefit accrual (1.84% of the average high 3 consecutive years of compensation) is lower than the rate of benefit accrual that would apply to a younger participant because a participant who is younger than age 65 with the same number of years of credited service and compensation history would have a rate equal to 2% of average high 3 consecutive years of compensation. Accordingly, Plan R fails to satisfy the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 13. (i) The facts are the same as in Example 10, except that, under the plan provisions relating to retirement after normal retirement age, a participant's benefit is equal to the sum of the benefit that would have been paid had the participant retired as of the end of the preceding plan year and the greater of the actuarial increase for the plan year on that amount or the otherwise applicable accrual for the plan year under the plan formula. The foregoing is illustrated in the following table with respect to certain years of credited service performed by G after attaining normal retirement age 65.

Age at start of plan year	Years of service at start of plan year	Average pay for high 3 consecutive years at start of plan year	Plan formula at start of plan year (.02 times column 2 times column 3)	Additional accruals for the plan year under plan formula (column 4 minus column 4 for prior year)	Annual benefit, as actuarially increased (column 8 from prior year actuarially increased)	Actuarial increase on the benefit at prior age (column 6 minus column 8 for prior year)	Annual benefit to which C is entitled at start of yeare (column 8 at prior age plus the greater of column 5 and column 7)	Annual benefit as percent of average pay column 8 ÷ column 3) (percent)	Rate of benefit accrual (column 9 less column 9 for prior year) (percent)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
65	10	$40,000	$8,000	n/a	n/a	n/a	$8,000	20%	2%
66	11	42,000	9,240	$1,240	$8,964	$964	9,240	22	2
67	12	58,000	13,920	4,680	10,386	1,142	13,920	24	2
68	13	60,000	15,600	1,680	15,697	1,777	15,697	26.16	2.16

Age at start of plan year	Years of service at start of plan year	Average pay for high 3 consecutive years at start of plan year	Plan formula at start of plan year (.02 times column 2 times column 3)	Additional accruals for the plan year under plan formula (column 4 minus column 4 for prior year)	Annual benefit, as actuarially increased (column 8 from prior year actuarially increased)	Actuarial increase on the benefit at prior age (column 6 minus column 8 for prior year)	Annual benefit to which C is entitled at start of yeare (column 8 at prior age plus the greater of column 5 and column 7)	Annual benefit as percent of average pay column 8 ÷ column 3) (percent)	Rate of benefit accrual (column 9 less column 9 for prior year) (percent)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
69	14	66,000	18,480	2,880	17,762	2,065	18,577	28.1	2
70	15	68,000	20,400	1,920	21,098	2,521	21,098	31.03	2.93

(ii) In the year G is 69 at the beginning of the year, G's rate of benefit accrual (2% of the average high 3 consecutive years of compensation) is not lower than the rate that would apply to G if G were younger. For example, if G were age 68 with the same 14 years of credited service and compensation history that G has at age 69, G would have a rate of benefit accrual equal to 2% of average high 3 consecutive years of compensation (in contrast to *Example 12* in which the rate is 1.84% for an employee who is age 69 with 14 years of service, but would be 2% for younger employees with the same service and compensation history). Similar results would apply for any other potential younger participant in Plan R. Accordingly, Plan R satisfies the requirements of section 411(b)(1)(H) and this paragraph (b).

(iii) The decrease in G's rate of benefit accrual from 2.16% to 2% from age 68 to age 69 is not an impermissible reduction because of age. Under paragraph (b)(3) of this section, the determination of whether an impermissible reduction occurs because of age is made by comparing any potential participant's rate of benefit accrual to what the rate would be if the participant were younger (but with the same years of service, compensation history, and any other relevant factors taken into account under the plan), not by comparing a participant's rate in one year to that participant's rate in an earlier year. As indicated in paragraph (ii) of this *Example 13,* the rate of benefit accrual for a participant who is age 69 with 14 years of service at the beginning of the year is compared with the rate for all younger participants with the same service and compensation history. Similarly, the 2.16% rate for a participant who is age 68 with 13 years of service at the beginning of the year is compared with the rate for all younger participants with the same service and compensation history. Thus, for example, if G were age 67 with the same 13 years credited service and high 3 years of compensation equal to $60,000 that G has at age 68, G would have a rate of benefit accrual equal to 2.08% of average high 3 consecutive years of compensation.

(4) *Certain adjustments for benefit distributions*—(i) *In general.* Under section 411(b)(1)(H)(iii)(I), a defined benefit plan may provide that the requirement for continued benefit accrual under section 411(b)(1)(H)(i) and this paragraph (b) for a plan year is treated as satisfied to the extent of the actuarial equivalent of benefits distributed, as provided in this paragraph (b)(4). Distributions made before the participant attains normal retirement age or during a period that is not ''section 203(a)(3)(B) service,'' as defined in 29 CFR 2530.203–3(c) of the regulations of the Department of Labor, may not be taken into account under this paragraph (b)(4).

(ii) *Amount of the adjustment for benefits distributed.* A defined benefit plan does not violate paragraph (b) of this section for a plan year merely because the rate of benefit accrual is reduced (but not below zero) to the extent of the actuarial equivalent of plan benefit distributions made to the participant during the plan year. For this purpose, distributions made during the plan year generally are disregarded for that year to the extent the actuarial value of the distributions exceeds the actuarial value of distributions that would have been made during the plan year had distribution of the participant's accrued benefit commenced at the beginning of the plan year (or, if later, at the participant's normal retirement age) in the normal form of benefit. (But see paragraph (b)(4)(iii) of this section for rules taking this excess into account at the end of the current year and in future years.) In addition, in any case in which the participant's benefits are being distributed in an optional form of benefit under which the amount payable annually is less than the amount payable under the plan's normal form of benefit (for example, a QJSA under which the annual benefit is less than the amount payable annually under a straight life annuity normal form), the plan may treat the participant as receiving payments under an actuarially equivalent normal form of benefit for the plan year and all future plan years.

(iii) *Treatment of accelerated benefit payments*—(A) *Accelerated benefit payments.* This paragraph (b)(4)(iii) applies if the actuarial value of the distributions made to the participant during a plan year exceeds the actuarial value of the distributions that would have been made during the plan year had distributions commenced at the beginning of the plan year (or, if later, at the participant's normal retirement age) in the normal form of benefit. In such a case, the excess payments (referred to as accelerated benefit payments) are converted to an actuarially equivalent stream of annual benefit payments under the plan's normal form of benefit, commencing at the beginning of the next plan year. This conversion must be based on the same actuarial assumptions used under the plan to determine the distributions made to the participant during the plan year. For purposes of this paragraph (b)(4)(iii), the actuarially equivalent stream of annual benefit payments is referred to as the annuity equivalent of accelerated benefit payments.

(B) *Credit for annuity equivalent of accelerated benefit payments.* For purposes of applying paragraphs (b)(4)(ii) and (iii)(C) of this section, the annuity equivalent of accelerated benefit payments is deemed to be paid to the participant in each plan year that begins after the plan year during which any accelerated benefit payment under paragraph (b)(4)(iii)(A) of this section is made.

(C) *Effect of accelerated benefit payments on rate of benefit accrual.* If any accelerated benefit payments under paragraph (b)(4)(iii)(A) of this section have been made to a participant, then, in lieu of determining the participant's rate of benefit accrual under paragraph (b)(2)(ii) of this section, the participant's rate of benefit accrual for a plan year is determined as the excess (if any) of—

(*1*) The sum of the annual benefit to which the participant is entitled at the end of the current plan year, assuming payment commences in the normal form at the end of the current plan year, plus the amount deemed paid in the next

plan year under the annuity equivalent of accelerated benefit payments; over

(*2*) The sum of the annual benefit to which the participant was entitled at the end of the preceding plan year, assuming that payment commences in the normal form at the later of normal retirement age and the end of the preceding plan year, plus the amount deemed paid during the current plan year under the annuity equivalent of accelerated benefit payments.

(iv) *Examples.* The provisions of this paragraph (b)(4) may be illustrated by the following examples. In each of the examples, except as otherwise indicated, normal retirement age is 65 and the birthday of each participant is assumed to be January 1. In addition, except as otherwise indicated, the plan contains no limitations on the maximum amount of benefits the plan will pay to any participant (other than the limitations imposed by section 415), on the maximum number of years of credited service taken into account under the plan, or on the compensation used for purposes of determining the amount of any participant's normal retirement benefit (other than the limitation imposed by section 401(a)(17)) and the plan uses the following actuarial assumptions for purposes of determining the amount of any participant's accrued benefit (other than the limitation imposed by section 401(a)(17)), and the plan uses the following actuarial assumptions in determining actuarial equivalence: a 7.5% rate of interest and the 83 GAM (male) mortality table. The examples are as follows:

Example 1. (i) *Facts relating to the year in which participant attains age 65.* Employer Z maintains Plan Q, a defined benefit plan that provides an accrued benefit of $40 per month multiplied by the participant's years of credited service. Participant F attains normal retirement age of 65 on January 1 and continues in the full time service of Z. At the end of the year in which F attains age 65, F has 30 years of credited service under the plan and could receive an accrued benefit of $1,200 per month ($40 x 30 years) if F retires. Plan Q does not suspend payment of benefits for participants who work past normal retirement age and F commences benefit payments at normal retirement age. (These are the same facts as in *Example 10* of paragraph (b)(3)(iii) of this section, except that the Plan Q does not provide for the suspension of normal retirement benefit payments.) The plan offsets the value of the benefit distributions against benefit accruals in plan years ending after the participant's attainment of normal retirement age, as permitted by paragraph (b)(4)(ii) of this section. Participant F (who remains in the full time service of Y) receives 12 monthly benefit payments after attainment of age 65 and prior to attainment of age 66. The total monthly benefit payments of $14,400 ($1,200 × 12 payments) have an actuarial value at the end of the year in which F turns 65 of $15,118 (reflecting interest and mortality) which would produce a monthly life annuity benefit of $145 commencing at age 66. The rate of benefit accrual otherwise applicable under the plan formula for the year of credited service F completes after attaining normal retirement age is $40 per month.

(ii) *Conclusions relating to the year in which F attains age 65.* Because the actuarial value (determined as a monthly benefit of $145) of the benefit payments made during the first year after F's attainment of normal retirement age exceeds the benefit accrual otherwise applicable for the first year after F's attainment of normal retirement age, the plan is not required to accrue benefits on behalf of F for the one year of credited service after F's attainment of normal retirement age and the plan is not required to increase F's monthly benefit payment of $1,200 during the year in which F attains age 65.

(iii) *Facts relating to the year in which F attains age 66.* Assume F receives 12 additional monthly benefit payments the next year prior to F's retirement at the end of the next year when F attains age 66. The total monthly benefit payments of $14,400 ($1,200 × 12 payments) have an actuarial value at the end of that year of $15,135 (reflecting interest and mortality) which would produce a monthly benefit payment of $149 commencing at age 67. The rate of benefit accrual otherwise applicable under the plan formula for the additional year of credited service F completed that year is $40 per month.

(iv) *Conclusions relating to the year in which F attains age 66.* Because the actuarial value (determined as a monthly benefit of $149) of the benefit payments made during that year exceeds the benefit accrual otherwise applicable for the additional year of credited service, the plan is not required to accrue benefits on behalf of F for the second year of credited service F completed after attaining normal retirement age and the plan is not required to increase F's monthly benefit payment of $1,200.

Example 2. (i) *Facts.* Employer Z maintains Plan R, a defined benefit plan that provides an accrued benefit of 2% of the average of a participant's high 3 consecutive years of compensation multiplied by the participant's years of credited service under the plan. Payment of a participant's retirement benefit is not suspended, and the plan provides that retirement benefits that commence after a participant's normal retirement age are actuarially increased for late retirement. Under the plan provision relating to actuarial increase, the actuarial increase for the plan year is made to the benefit that would have been paid had the participant retired as of the end of the preceding plan year. The plan then provides the greater of this actuarially increased benefit and benefits under the plan formula based on continued service, thereby including the actuarial increase in the rate of benefit accrual in plan years ending after attainment of normal retirement age, as provided in paragraph (b)(2)(ii) of this section. Participant G, who has attained normal retirement age (age 65) under the plan, continues in the full time service of Z. At normal retirement age, G has average compensation of $40,000 for G's high 3 consecutive years and has 10 years of credited service under the plan. Thus, at normal retirement age, G is entitled to receive an annual normal retirement benefit of $8,000 ($40,000 × .02 x 10 years). G continues working after normal retirement age, with G's average compensation increasing to $68,000 at age 70. (The facts in this *Example 2* are the same as *Example 13* of paragraph (b)(3)(ii) of this section, except that the employee does not retire at age 70, but continues in the full time service of Z.) Upon G's attainment of age 70, the plan commences benefit payments to G. The annual benefit paid to G in the first plan year is $21,098. In determining the annual benefit payable to G in each subsequent plan year, the plan offsets the value of benefit distributions made to the participant by the close of the prior plan year against benefit accruals otherwise applicable in plan years during which such distributions were made, as permitted by paragraph (b)(4)(ii)(B) of this section.

(ii) *Conclusion.* Accordingly, for each subsequent plan year, G is entitled under the plan to receive benefit payments based on G's benefit at the close of the prior plan year, plus the excess (if any) of the benefit for the plan year determined under the plan formula otherwise applicable over the value of total benefit distributions made to G during the plan year. The foregoing is illustrated in the following table with respect to certain years of credited service performed by G while benefits were being distributed to G.

Age at start of plan year	Years of service at start of plan year	Average pay for high 3 consecutive years at start of plan year	Plan formula at start of plan year (.02 times column 2 times column 3)	Additional accruals for the plan year under plan formula (column 4 minus column 4 for prior year)	Benefit distributions made during the prior year	Annual benefit that is actuarial equivalent of column 6	Annual benefit to which G is entitled at end of the year (column 8 for prior year, plus the excess, if any of column 5 for the current year, over column 7 for current year)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
70	15	$68,000	$20,400	$1,920	none	none	$21,098
71	16	70,000	22,400	2,000	21,098	2,799	21,098
72	17	90,000	30,600	8,200	21,098	2,891	26,407
73	18	100,000	36,000	5,400	26,407	3,743	28,065

Example 3. (i) *Facts relating to the year in which a participant attains age 65.* Plan X provides an accrued benefit equal to 1% of the average of a participant's highest 3 consecutive years of compensation times the participant's years of service, payable in the normal form of a straight life annuity commencing at normal retirement age or at the date of actual retirement if later. Plan X permits a participant who is an employee to commence distributions after attainment of normal retirement age (age 65) and provides for benefits otherwise accrued after normal retirement age to be offset by the actuarial equivalent of any benefit distributions made to the participant. Plan X provides for a participant who does not commence distributions to receive an actuarial increase for the year from the amount payable at the end of the preceding year (if greater than the amount otherwise accrued for H during the year under X's formula). Participant H attains age 65 on the first day of a plan year when Participant H's average highest 3 consecutive years of compensation is $60,000 and H has 20 years of service. Accordingly, Participant H's accrued benefit at the beginning of the year is equal to a straight life annuity of $1,000 per month (20% times $60,000 divided by 12) commencing at the beginning of the year. Participant H elects to receive a single-sum distribution of $130,389 at the beginning of the year, which is equal to the present value of H's accrued benefit under section 417(e) at that time. Participant H continues to work through the end of the plan year and at the end of the year has average compensation of $60,000 for the year. Plan X uses the actuarial assumptions specified in section 417(e) for purposes of determining actuarial equivalence. For purposes of this *Example 3,* the applicable interest rate under section 417(e) is assumed to be 6%, and the applicable mortality table under section 417(e) is the mortality table in effect on January 1, 2003.

(ii) *Conclusion relating to effect of distributions made in the year H attains age 65.* Under this paragraph (b)(4), H would otherwise accrue an additional monthly benefit of $50 for the additional year of service under the plan's formula (21% times $60,000 minus 20% times $60,000, divided by 12). The plan is permitted under section 411(b)(1)(H)(iii)(I) to offset additional accruals otherwise applicable after normal retirement age by the actuarial value of distributions made during the year. However, under paragraph (b)(4)(ii) of this section, distributions made during a plan year are disregarded to the extent that the actuarial value of the distributions exceeds the actuarial value of distributions that would have been made during the plan year had distribution of the participant's accrued benefit commenced at the beginning of the plan year under the plan's normal form.

(iii) *Conclusion relating to calculations for distribution made in the year H attains age 65.* At the end of the year, the actuarial value of the distribution made to H ($130,389 plus interest and mortality for the year equals $139,812) is greater than the year end actuarial value of distributions that would have been made during the plan year had distribution of the participant's accrued benefit at the beginning of the plan year commenced in the normal form at the beginning of the plan year (which is $12,470, based on the plan's actuarial assumptions). Accordingly, the $127,342 excess (referred to as an accelerated benefit payment) is disregarded in the current year. (However, as described below, the annuity equivalent of the $127,342 is deemed to be paid to H commencing at the beginning of the first plan year after the plan year during which the accelerated benefit payment is made.)

(iv) *Conclusion relating to rate of benefit accrual for the year H attains age 65.* To determine the rate of benefit accrual for the year in which H attains age 65, the annuity equivalent of accelerated benefit payments is calculated and, under paragraph (b)(4)(iii)(C) of this section, this amount is treated as part of the benefit payable at the end of the year in calculating the rate of benefit accrual for the year. In this *Example 3,* the annuity equivalent of the $127,342 accelerated benefit payment equals a straight life annuity of $1,000 per month commencing at the beginning of the next plan year. Thus, for purposes of applying paragraph (b)(4)(iii) of this section to determine the rate of benefit accrual for the plan year in which H attains age 65, paragraph (b)(4)(iii)(C)(*1*) of this section is an annual straight life annuity commencing at end of the year equal to $1,000 (the sum of the annual benefit to which the H is entitled at the end of the plan year, which is zero in this case, plus the amount deemed paid in the next plan year under the annuity equivalent of accelerated benefit payments, which is $1,000 in this case) and the amount in paragraph (b)(4)(iii)(C)(*2*) of this section is an annual straight life annuity commencing at end of the preceding plan year equal to $1,000. Thus, H's rate of benefit accrual for the year is zero.

(v) *Conclusion relating to whether rate of benefit accrual for year H attains age 65 satisfies section 411(b)(1)(H).* Under paragraph (b)(4)(ii) of this section, a plan may reduce the rate of benefit accrual otherwise applicable to the extent of distributions made during the year. The actuarial equivalent of $12,470 (the actuarial value of the 12 $1,000 monthly payments deemed paid to H during the plan year under paragraph (b)(4)(ii) of this section) is a straight life annuity commencing at the end of the plan year equal to $98 per month. Thus, the otherwise applicable accrual for the year may be reduced (but not below zero) by $98 per month. The highest rate of benefit accrual for any participant with H's service and compensation history who is younger is an annual straight life annuity of $50 per month. Because the permissible reduction of $98 per month is not less than the otherwise applicable accrual of $50 per month, Plan X is not required by this paragraph (b) for the year and section 411(b)(1)(H) to provide H with any additional accruals for the year.

(vi) *Conclusion relating to rate of benefit accrual for year H attains age 65 if no distribution were made.* If Participant H had not elected to receive any distribution during the plan year, then H's accrued benefit at the end of the year would be a straight life annuity of $1,098 per month commencing at the end of the year (which is actuarially equivalent to a straight life annuity of $1,000 per month commencing at the beginning of the year). Thus, H's rate of benefit accrual for that year would be $98 (but no adjustments for any distribution would apply).

(vii) *Facts relating to next year in which H attains age 66.* Participant H works another year and H's average compensation becomes $70,000. Under this paragraph (b)(4), H would otherwise accrue an additional monthly benefit of $233 for the additional year of service under the plan's formula (22% times $70,000, minus 21% times $60,000, divided by 12). However, the plan is permitted under section 411(b)(1)(H)(iii)(I) to

offset additional accruals after normal retirement age by the actuarial value of distributions made during the year. Under paragraph (b)(4)(iii)(B) of this section, the $1,000 annuity equivalent of accelerated benefit payments is deemed to be paid to H during this second year when H attains age 66. These deemed payments are actuarially equivalent to an accrual of $100 per month payable at the end of that year. Accordingly, the plan reduces the otherwise applicable accrual of $233 to the extent of the accrual of $100 per month payable at the end of the year in which H attains age 66. Thus, the $233 accrual during the year in which H becomes 66 is reduced by $100 to $133. Under the plan X, H's accrued benefit at the end of the year is $133 per month.

(viii) *Conclusion relating to rate of benefit accrual for year H attains age 66.* To determine the rate of benefit accrual for the second year when H attains age 66, the annuity equivalent of accelerated benefit payments is calculated and, under paragraph (b)(4)(iii)(C) of this section, this amount is treated as part of the benefit payable at the end of the year in calculating the rate of benefit accrual for the second year. In this *Example 3*, the annuity equivalent of the $127,342 accelerated benefit payment that was made in the year in which H attained age 65 equals a straight life annuity of $1,000 per month commencing at the beginning of the next plan year. Thus, for purposes of applying paragraph (b)(4)(iii) of this section to determine the rate of benefit accrual for the second plan year, the amount in paragraph (b)(4)(iii)(C)(*1*) of this section is an annual straight life annuity commencing at end of the year equal to $1,133 (the sum of the annual benefit to which the H is entitled at the end of the plan year, which is $133 in this case, plus the amount deemed paid in the next plan year under the annuity equivalent of accelerated benefit payments, which is $1,000 in this case) and the amount in paragraph (b)(4)(iii)(C)(*2*) of this section is an annual straight life annuity commencing at end of the preceding plan year equal to $1,000. Thus, H's rate of benefit accrual for the year in which H becomes age 66 is $133.

(ix) *Conclusion relating to whether rate of benefit accrual for year H becomes 66 satisfies section 411(b)(1)(H).* Under paragraph (b)(4))(ii) of this section, a plan may reduce the rate of benefit accrual to the extent of distributions made during the year. The actuarial equivalent of $12,480 (the actuarial value of the 12 $1,000 monthly payments deemed made to H during the plan year) is a straight life annuity commencing at the end of the plan year equal to $100 per month. Thus, the otherwise applicable accrual for the year may be reduced (but not below zero) by $100 per month. The highest rate of benefit accrual for any participant with H's service and compensation history who is younger is an annual straight life annuity of $233 per month. Thus, because the sum of $133 and $100 is not less than the otherwise applicable accrual of $233 per month, Plan X satisfies this paragraph (b) and section 411(b)(1)(H) for the year.

(c) *Defined contribution plans*—(1) *In general.* A defined contribution plan (including a target benefit plan described in § 1.410(a)–4(a)(1)) does not satisfy the requirements of section 411(b)(2) if the rate of allocation made to the account of a participant is reduced, either directly or indirectly, because of the participant's attainment of any age. A reduction in the rate of allocation includes any discontinuance in the allocation of employer contributions or forfeitures to the account of the participant or cessation of participation in the plan.

(2) *Rate of allocation*—(i) *Aggregate allocations.* For purposes of this paragraph (c), a participant's rate of allocation for any plan year is the aggregate allocations taken into account for the plan year under § 1.401(a)(4)–2(c)(2).

(ii) *Determination of rate of allocation.* A participant's rate of allocation for a plan year can be determined as a dollar amount. Alternatively, if a plan's formula bases a participant's allocations solely on compensation for the plan year and compensation is determined without regard to attainment of any age, then a participant's rate of allocation can be determined as a percentage of the participant's compensation for the plan year.

(3) *Reduction that is directly or indirectly because of a participant's attainment of any age*—(i) *Reduction in rate of allocation that is directly because of a participant's attainment of any age.* A plan provides for a reduction in the rate of allocation that is directly because of a participant's attainment of any age for any plan year if, under the terms of the plan, any participant's rate of allocation for the plan year would be higher if the participant were younger. Thus, a plan fails to satisfy section 411(b)(2) and this paragraph (c) if, under the terms of the plan, the rate of allocation for any individual who is or could be a participant under the plan would be lower solely as a result of such individual being older.

(ii) *Reduction in rate of allocation that is indirectly because of a participant's attainment of any age*—(A) *In general.* A plan provides for a reduction in the rate of allocation that is indirectly because of a participant's attainment of any age for any plan year if any participant's rate of allocation for the plan year would be higher if the participant were to have a characteristic that is a proxy for being younger, based on all of the relevant facts and circumstances. Thus, a plan fails to satisfy section 411(b)(2) and this paragraph (c) if the rate of allocation for any individual who is or could be a participant under the plan would be lower solely as a result of such individual having a different characteristic which is a proxy for being older, based on applicable facts and circumstances.

(B) *Treatment of limitations.* A reduction in a participant's rate of allocation is not indirectly because of the attainment of any age in violation of section 411(b)(2) solely because of a positive correlation between attainment of any age and a reduction in the rate of allocation. Thus, a defined contribution plan (including a target benefit plan described in § 1.410(a)–4(a)(1)) does not fail to satisfy the minimum vesting standards of section 411(a) solely because the plan limits the total amount of employer contributions and forfeitures that may be allocated to a participant's account (for a particular plan year or for the participant's total years of credited service under the plan), solely because the plan limits the total number of years of credited service for which a participant's account may receive allocations of employer contributions and forfeitures, or solely because the plan limits the number of years of credited service that may be taken into account for purposes of determining the amount of, or the rate at which, employer contributions and forfeitures are allocated to a participant's account for a particular plan year.

(iii) *Special rule for target benefit plans.* A defined contribution plan that is a target benefit plan, as defined in § 1.410(a)–4(a)(1), satisfies section 411(b)(2) only if the defined benefit formula used to determine allocations would satisfy section 411(b)(1)(H) without regard to section 411(b)(1)(H)(iii). Such a target benefit plan does not fail to satisfy this paragraph (c) with respect to allocations after normal retirement age merely because the allocation for a plan year is reduced to reflect shorter longevity using a reasonable actuarial assumption regarding mortality.

(iv) *Additional rules.* The Commissioner may prescribe additional guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), with respect to the application of section 411(b)(2) and this section to target benefit plans.

(d) *Benefits and forms of benefits subject to requirements*—(1) *General rule.* Except as provided in paragraph (d)(2) or (3) of this section, sections 411(b)(1)(H) and 411(b)(2) and paragraphs (b) and (c) of this section apply to all benefits (and forms of benefits) provided under the plan, including accrued benefits, benefits described in section 411(d)(6), ancillary

benefits, and other rights and features provided under the plan. Accordingly, except as provided in paragraph (d)(2) or (3) of this section, a participant's rate of benefit accrual under a defined benefit plan and a participant's allocations under a defined contribution plan are considered to be reduced because of the participant's attainment of any age if optional forms of benefits, ancillary benefits, or other rights or features under the plan provided with respect to benefits or allocations attributable to credited service prior to the attainment of the participant's age are not provided on at least as favorable a basis with respect to benefits or allocations attributable to credited service after attainment of the participant's age. Thus, for example, a plan may not provide a single-sum payment only with respect to benefits attributable to years of credited service before the attainment of a specified age. Similarly, except as provided in paragraph (d)(2) or (3) of this section, if an optional form of benefit is available under the plan at a specified age, the availability of that form of benefit, or the method for determining the manner in which that form of benefit is paid, may not, directly or indirectly, be denied or provided on terms less favorable to participants because of the attainment of any age. Similarly, if the method for determining the amount or the rate of the subsidized portion of a joint and survivor annuity or the subsidized portion of a preretirement survivor annuity is less favorable with respect to participants who have attained a specified age than with respect to participants who have not attained such age, benefit accruals or account allocations under the plan will be considered to be reduced because of the attainment of such age.

(2) *Special rule for actuarial assumptions regarding mortality.* A plan does not fail to satisfy section 411(b)(1)(H) or this paragraph (d) merely because the plan makes actuarial adjustments using a reasonable assumption regarding mortality to calculate optional forms of benefit or to calculate the cost of providing a qualified preretirement survivor annuity, as defined in section 417(c).

(3) *Special rule for certain benefits.* A plan does not fail to satisfy section 411(b)(1)(H) or this paragraph (d) merely because the following benefits, or the manner in which such benefits are provided under the plan, vary because of the attainment of any higher age—

(i) The subsidized portion of an early retirement benefit (whether provided on a temporary or permanent basis);

(ii) A qualified disability benefit (as defined in § 1.411(a)–7(c)(3)); or

(iii) A social security supplement (as defined in § 1.411(a)–7(c)(4)(ii)).

(e) *Coordination with certain provisions.* Notwithstanding section 411(b)(1)(H), section 411(b)(2), and paragraphs (a) through (d) of this section, the following rules apply—

(1) *Section 415 limitations.* No benefit accrual with respect to a participant in a defined benefit plan is required for a plan year by section 411(b)(1)(H)(i) and no allocation to the account of a participant in a defined contribution plan (including a target benefit plan described in § 1.410(a)–4(a)(1)) is required for a plan year by section 411(b)(2) to the extent that the allocation or accrual would cause the plan to exceed the limitations of section 415.

(2) *Prohibited discrimination*—(i) No benefit accrual on behalf of a highly compensated employee in a defined benefit plan is required for a plan year by section 411(b)(1)(H)(i) to the extent such benefit accrual would cause the plan to discriminate in favor of highly compensated employees within the meaning of section 401(a)(4).

(ii) No allocation to the account of a highly compensated employee in a defined contribution plan (including a target benefit plan) is required for a plan year by section 411(b)(2) to the extent the allocation would cause the plan to discriminate in favor of highly compensated employees within the meaning of section 401(a)(4).

(iii) The Commissioner may provide additional guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), relating to prohibited discrimination in favor of highly compensated employees.

(3) *Permitted disparity.* A defined benefit plan does not fail to satisfy section 411(b)(1)(H) for a plan year and a defined contribution plan does not fail to satisfy 411(b)(2) for a plan year merely because accruals or allocations under the plan are reduced to satisfy the uniformity requirements of § 1.401(*l*)–2(c) or 1.401(*l*)–3(c) for the plan year.

(4) *Distribution rights under section 411.* A defined benefit plan does not fail to satisfy section 411(b)(1)(H) for a plan year and a defined contribution plan does not fail to satisfy 411(b)(2) for a plan year merely because of the right to defer distributions provided under section 411(a)(11) or a plan provision consistent with section 411(a)(11).

(f) *Effective dates*—(1) *Effective date of sections 411(b)(1)(H) and 411(b)(2) for noncollectively bargained plans*—(i) *In general.* Except as otherwise provided in paragraph (f)(2) of this section, sections 411(b)(1)(H) and 411(b)(2) are applicable for plan years beginning on or after January 1, 1988, with respect to a participant who is credited with at least 1 hour of service in a plan year beginning on or after January 1, 1988. Neither section 411(b)(1)(H) nor section 411(b)(2) is applicable with respect to a participant who is not credited with at least 1 hour of service in a plan year beginning on or after January 1, 1988.

(ii) *Defined benefit plans.* In the case of a participant who is credited with at least 1 hour of service in a plan year beginning on or after January 1, 1988, section 411(b)(1)(H) is applicable with respect to all years of service completed by the participant other than plan years beginning before January 1, 1988.

(iii) *Defined contribution plans.* Section 411(b)(2) does not apply with respect to allocations of employer contributions or forfeitures to the accounts of participants under a defined contribution plan for a plan year beginning before January 1, 1988.

(iv) *Hour of service.* For purposes of this paragraph (f)(1), 1 hour of service means 1 hour of service recognized under the plan or required to be recognized under the plan by section 410 (relating to minimum participation standards) or section 411 (relating to minimum vesting standards). In the case of a plan that does not determine service on the basis of hours of service, 1 hour of service means any service recognized under the plan or required to be recognized under the plan by section 410 (relating to minimum participation standards) or section 411 (relating to minimum vesting standards).

(2) *Effective date of sections 411(b)(1)(H) and 411(b)(2) for collectively bargained plans*—(i) In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, ratified before March 1, 1986, sections 411(b)(1)(H) and 411(b)(2) are applicable for benefits provided under, and employees covered by, any such agreement with respect to plan years beginning on or after the later of—

(A) January 1, 1988; or

(B) The earlier of January 1, 1990, or the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension of any such agreement occurring on or after March 1, 1986).

(ii) The applicability date provisions of paragraph (f)(1) of this section shall apply in the same manner to plans described in paragraph (f)(2)(i) of this section, except that the applicable date

determined under paragraph (f)(2)(i) of this section shall be substituted for the effective date determined under paragraph (f)(1) of this section.

(iii) In accordance with the provisions of paragraph (f)(2)(i) of this section, a plan described therein may be subject to different applicability dates under sections 411(b)(1)(H) and 411(b)(2) for employees who are covered by a collective bargaining agreement and employees who are not covered by a collective bargaining agreement.

(iv) For purposes of paragraph (f)(2)(i) of this section, the service crediting rules of paragraph (f)(1) of this section shall apply to a plan described in paragraph (f)(2)(i) of this section, except that in applying such rules the applicability date determined under paragraph (f)(2)(i) of this section shall be substituted for the applicability date determined under paragraph (f)(1) of this section. See paragraph (f)(1)(iv) of this section for rules relating to the recognition of an hour of service.

(3) *Regulatory effective date.* Paragraphs (a) through (e) of this section are applicable with respect to plan years beginning on or after the date of publication of final regulations in the **Federal Register**.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Coast Guard

33 CFR Part 52

[OST Docket No. 2002–13439; Notice 2002–1]

RIN–2105–AD19

Coast Guard Board for Correction of Military Records; Procedural Regulation

AGENCY: Office of the Secretary, Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes to revise and reissue its procedural regulations for the Coast Guard Board for Correction of Military Records (Board). This action is taken on the Department's initiative in order to clarify application procedures; to explain applicants' legal rights and burden of proof; to allow applicants to change their requests for relief, to submit evidence after their applications have been docketed, or to request extensions of the time to respond to the advisory opinion of the Coast Guard without filing a new application or waiving their right to a timely decision; to provide for administrative closure of cases without Board action when the Chair determines that an application has been erroneously docketed; to facilitate Board decisions when the advisory opinions of the Coast Guard are not timely received; to increase the time provided for applicants to respond to the advisory opinions; to facilitate the Board's review of privileged, classified, and sensitive information; to clarify the Board's authority to order the Coast Guard to convene medical boards to evaluate applicants pursuant to applications for separations by reason of disability; to clarify actions that may be taken by the delegate of the Secretary; and to notify the public of the Board's reading room.

DATES: Comments must be submitted on or before January 27, 2003.

ADDRESSES: Anyone wishing to file a comment should refer to the OST docket and notice numbers (OST Docket No. OST 2002–13439, Notice No.1). You may submit your comments and related material by only one of the following methods: You may mail your comments to the Docket Management System, U.S. Department of Transportation, Room PL–401, 400 7th Street SW., Washington, DC 20590–0001; or you may submit your comments electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the ''Help'' menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, 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 at the same address during regular business hours. You may also obtain access to this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dorothy J. Ulmer, Chair, Board for Correction of Military Records of the Coast Guard, C–60, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590. Telephone: (202) 366–9335.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation, acting through the Department of Transportation Board for Correction of Military Records of the Coast Guard, is authorized by section 1552 of title 10 of the United States Code to correct the military records of active duty, reserve, retired, and discharged Coast Guard military personnel who apply for a correction of an error or injustice in their records.

The Need for Revision

The Board's current rules at 33 CFR part 52 have become disorganized over time by amendments and have several shortcomings that may negatively affect the Board's applicants and the timeliness of the Board's decisions. This proposed revision of 33 CFR part 52 is intended to better organize the rules, notify applicants of their rights and Board procedures, and remove other shortcomings as described below.

The current rules fail to inform the public of the following important matters: The proper format for briefs in support of an application; the need for a family member or legal representative to submit proof of his or her proper interest before applying on behalf of a deceased or incompetent veteran; the requirement that applicants inform the Board of any change in their mailing address prior to final action by the Board; the fact that applicants whose cases are processed under the Whistleblower Protection Act and who are granted a hearing may be entitled to representation by a Coast Guard law specialist in accordance with 10 U.S.C. 1034(f)(3)(A); the presumption of regularity accorded military records and the burden of proof borne by applicants; the possible actions the delegate of the Secretary may take when reviewing a recommended decision of the Board; the possible reduction of monetary awards resulting from record corrections because of setoffs required by law or regulation; and the availability of copies of the Board's final decisions, redacted to protect the privacy of applicants, for review in the Board's reading room and on a Web site. These are matters that should be addressed in the Board's rules.

Furthermore, the current rule allows an applicant only 15 days to respond to the written views of the Coast Guard on his or her application. § 52.82(d). In light of the underway schedules of some of the Board's active duty applicants assigned to sea duty, 15 days is insufficient time for some applicants to respond. No provision addresses applicants' requests for extensions of that time in order to consult counsel or gather more evidence. The current rule requires members who submit evidence after submitting their applications to waive their right to a final decision

within ten months and makes no provision for a new deadline. § 52.61(c). Moreover, no provision addresses the consequences of an applicant's decision to change his or her request for relief.

The current rule states that Board action is required before a member can withdraw an application. § 52.26. It also allows the Chair to deny an application, without prejudice and without action by the Board, if he or she believes that the evidence is insufficient or that the application was untimely and lacks merit. § 52.32.

The current rule does not address or facilitate the Board's access to privileged, classified, and sensitive information, such as reports of investigations, which is occasionally necessary for the Board to determine whether an error or injustice has been committed. The current rule also permits applicants to inspect the Board's record of proceedings without expressly providing for the protection of privileged, classified, and sensitive information. § 52.66.

The current rule states that the Board shall consider any written recommendation submitted by the Chief Counsel of the Coast Guard before issuing a decision. § 52.82(e). However, it provides no deadline for the Chief Counsel's submission even though the Board must take final action on each application within ten months. 14 U.S.C. 425. Delayed submissions by the Chief Counsel's office can leave the Board with little or no time to receive the applicant's response, issue a final decision, and have it reviewed by the delegate of the Secretary before the statutory ten-month deadline has expired. The current rule also does not take into account written views submitted by a delegate of the Commandant of the Coast Guard other than the Chief Counsel. In addition, the current rule fails to require the Coast Guard to describe what ''significant issue of Coast Guard policy'' is at stake when he or she invokes review of a Board decision by the delegate of the Secretary. § 52.64(a)(2).

The current rule permits the Board to specify any correction of a record in its order and to order the Coast Guard to take ''any other action deemed necessary to carry out the Board's recommendation,'' but it does not expressly permit the Board to order the Coast Guard to convene medical boards to determine an applicant's disability rating so that his or her separation can be corrected. § 52.61(e). The current rule also requires the delegate of the Secretary to review cases in which the Board corrects a record to show that a member is entitled to a medal or award contrary to the Coast Guard's recommendation. In addition, the current rule does not address what the Coast Guard should do if it finds that an order of the Board is incomplete because of an oversight.

Section-by-Section Analysis of the Proposed Rule

Subpart A—Purpose and Authority

Section 52.1 Purpose.

This section remains unchanged under the proposal.

Section 52.2 Authority.

This section would be amended to reflect the codification of the Board's ten-month deadline for issuing decisions under 14 U.S.C. 425 and to add a citation (10 U.S.C. 1552(a)(4)) for the finality and conclusiveness of the Board's orders.

Subpart B—Establishment, Function, and Jurisdiction of Board

Section 52.11 Establishment and Composition

Throughout this section and all of the proposed rule, the term Chair would be substituted for the term Chairman to establish gender neutrality. This section would also be amended to remove a citation to 49 U.S.C. 108(a).

Section 52.12 Function

This section would be amended to reflect the fact that the Board considers submissions from the Coast Guard and other Government offices along with applications and military records in reaching its decisions.

Section 52.13 Jurisdiction

No changes are proposed for this section.

Subpart C—General Provisions Regarding Applications

Section 52.21 General Requirements

No changes are proposed for paragraph (a). Paragraph (b) would be amended to inform family members and legal representatives that they must submit proof of their proper interest before applying to the Board for the correction of the military record of a deceased or incompetent veteran. Paragraph (c) would be amended to reflect the fact that applications are not docketed by the Board until they are complete and to reflect the need for substantial evidence or information and all military and medical records before an application is considered complete. Paragraph (d) would be added to advise applicants of the necessity of keeping the Board informed of any changes in mailing address so that they will receive the Board's correspondence. Paragraph (e) would be added to ensure that briefs submitted in support of applications are readable, replicable, and not unduly lengthy.

Section 52.22 Time Limit for Filing Application

This section would be slightly reworded to clarify why an applicant must provide reasons for submitting an application after the three-year statute of limitations has passed.

Section 52.23 Counsel

Paragraph (a) would be added to inform applicants that they may be represented by counsel at their own expense but that applicants whose cases are processed under the Whistleblower Protection Act may be entitled to representation by a law specialist at a hearing convened in accordance with Subpart F. The previous text of this section would appear in paragraph (b) and would be amended by updating two citations and by making the Chair, rather than the Board, responsible for deciding the competence of an applicant's chosen representative.

Section 52.24 Evidence and Burden of Proof

Paragraph (a) would be revised to encourage the timely submission of evidence with the initial application and to direct attention toward the new rule concerning late submissions of evidence in section 52.26. Paragraph (b) would be added to inform applicants of the presumption of regularity accorded military records and of the burden of proof they must meet to be granted relief, which is the preponderance of the evidence.

Section 52.25 Access to Official Records

This section would be amended to consolidate the sentences.

Section 52.26 Right to Timely Decision; Effect of Requests for Extensions, Changes in Requests for Relief, and Late Submissions of Evidence

This new section, which would incorporate the provisions in old sections 52.68 and 52.61(c), would inform applicants of their right to a final decision on their applications within ten months of the completion of their applications. It would also permit applicants to request extensions, submit evidence after their applications have been docketed, and alter their requests for relief without waiving their right to

a timely decision. It would provide that, if an applicant requests an extension or unreasonably delays responding to a request from the Board, the Board's ten-month deadline would be extended by the duration of the extension or of the unreasonably delay. It would further provide that, if in the determination of the Chair, an applicant has submitted significant new evidence or has significantly altered his or her request for relief after his or her application has been docketed, the application would be considered newly completed and the applicant would have the right to a final decision within ten months of the new date of completion.

Section 52.27 Withdrawal of Application

This section (old § 52.26) would be revised to allow the Chair to permit an applicant to withdraw his or her application without Board action.

Section 52.28 Stay of Proceedings

No changes are proposed for this section (old § 52.33), apart from its renumbering. It should be renumbered because it belongs better under this Subpart C-General Provisions Regarding Applications than where it was under Subpart D-Consideration of Application.

Subpart D—Consideration of Application and Administrative Closure

Section 52.31 Consideration of Application

This section would be amended to show that the Chair's initial review of an application to determine whether it is complete occurs before the application is docketed.

Section 52.32 Administrative Closure

This section would be renamed and expanded to clarify the circumstances under which the Chair may close a case without prejudice and without Board action. Paragraph (a) would permit the Chair to close a case when he or she determines that the application was erroneously documented because it was never completed, the Board lacks authority to grant the requested relief, the applicant failed to exhaust an administrative remedy before applying to the Board, or the Coast Guard has already made the requested corrections. Paragraph (b) addresses how applicants might reapply after their cases have been administratively closed. Paragraph (c) would require the Chair to inform applicants of their right to reapply whenever he or she administratively closes a case.

Old section 52.33 Stay of proceedings. This old section would be renumbered as section 52.28 under the proposed rule.

Subpart E—Submissions by the Coast Guard and Other Offices

This new Subpart E would embody old Subpart I—Miscellaneous Provisions. It would be renamed and repositioned to better reflect its contents and the order of the Board's procedures. Old Subpart E would be included in Subpart F.

Section 52.41 Assistance

No changes are proposed for this section (old § 52.81), apart from its renumbering.

Section 52.42 Views of the Coast Guard

Paragraph (a) (old § 52.82(a)) would be amended to reflect the amendments to sections 52.21 and 52.32. Paragraphs (a) and (b) (old § 52.82(c)) would be amended to reflect the fact that the views of the Coast Guard may be submitted in an advisory opinion by any delegate of the Commandant. Paragraph (c) (old § 52.82(e)) would be amended to require the Board to consider the advisory opinion of the Coast Guard only if it is submitted within 135 days of the date the application is complete but to permit the Board to consider advisory opinions submitted after the 135-day deadline has passed. The proposed rule would facilitate timely decisions when submissions of advisory opinions by the Coast Guard are delayed to the point where little or no time would remain for the Board to receive the applicant's response to the advisory opinion, issue a final decision, and have it reviewed by the delegate of the Secretary before the statutory ten-month deadline has expired. Paragraph (d) (old § 52.82(d)) would increase the time provided for the applicant's response to the advisory opinion from 15 to 30 days and allow the Chair to grant extensions of the time to respond. Paragraph (e), which is new, would require advisory opinions and applicants' briefs in response to advisory opinions to be readable, replicable, and not unduly lengthy.

Section 52.43 Requests for Further Information; Submissions of Classified, Privileged, and Sensitive Information

This section (old § 52.82(b)) would be expanded to address the Board's ability to seek information from applicants and from other Government offices, as well as from the Coast Guard. It addresses how the Board can receive and review classified, privileged, and sensitive information from the Coast Guard or another Government office while providing the applicant with a copy of any part of that information that would be released to him or her if requested by the applicant from the custodian of the information under 49 CFR parts 7 or 10.

Subpart F—Hearings

This subpart would incorporate both old Subpart E—Hearings and old Subpart F—Procedure at Hearings because both concern hearings.

Section 52.51 General provision

No changes other than renumbering and substituting the term Chair for the term Chairman are proposed for this section (old § 52.41).

Section 52.52 Notice of Hearing

No changes other than renumbering, substituting the term Chair for the term Chairman, and adding a comma for stylistic consistency are proposed for this section (old § 52.42).

Section 52.53 Witnesses

This section (old § 52.43) would be renumbered and amended by substituting the term Chair for the term Chairman, adding a comma for stylistic consistency, and clarifying the language to indicate that the applicant is only responsible for ensuring the appearance of his or her own witnesses at a hearing.

Section 52.54 Expenses

This section (old § 52.44) would be renumbered and amended to inform applicants that they may be entitled to representation by a law specialist if they are granted a hearing and their cases are processed under the Whistleblower Protection Act.

Section 52.55 Nonappearance

No change is proposed for this section (old § 52.45), apart from its renumbering.

Section 52.56 Conduct of Hearing

No amendments other than renumbering, substituting the term Chair for the term Chairman, and adding a comma for stylistic consistency are proposed for this section (old § 52.51).

Section 52.57 Record of Hearing

No change is proposed for this section (old § 52.52), apart from its renumbering.

Subpart G—Judgment and Disposition

Section 52.61 Deliberations and Decision

No amendments other than substituting the term Chair for the term

Chairman are proposed for paragraphs (a) and (b). Old paragraph (c) would be amended and moved to proposed paragraphs 52.24(a) and 52.26(c). New paragraph (c) (old paragraph (d)) would be amended only by substituting the term Chair for the term Chairman and by capitalizing the letter b in Board for stylistic consistency. Paragraph (d) (old paragraph (e)) would be revised to show that the Board's authority to order the Coast Guard to take ''any other action deemed necessary to carry out the Board's recommendation,'' as previously provided, includes the authority to order the Coast Guard to convene medical boards to help determine an applicant's proper disability rating for a correction of his or her separation. No changes are proposed for paragraph (e) (old paragraph (f)).

Section 52.62 Minority Report

No changes are proposed for this section.

Section 52.63 Record of Proceedings

Paragraph (a) would contain the existing, unamended text of this section. Paragraph (b) would be added to provide for the return of classified, privileged, or sensitive information reviewed by the Board to the custodial Government office and the inclusion of the redacted copy of the information that was provided to the applicant in the Board's permanent record of proceedings after final action is taken.

Section 52.64 Final Action

Paragraph (a)(2) would be amended to require the delegate of the Commandant of the Coast Guard to identify and describe in his or her advisory opinion the significant issue of Coast Guard policy challenged in an application that requires its review by the delegate of the Secretary under paragraph (b) if the Board grants relief contrary to the Coast Guard's advisory opinion or if the Board grants substantially different relief than that recommended by the Coast Guard. Paragraph (a)(2) would also be amended to make the Board's decision on an application to receive a medal or award final unless the Coast Guard describes a significant issue of Coast Guard policy that is challenged in the application. Paragraph (b) would be amended to reflect the range of actions the delegate of the Secretary may take in reviewing a decision of the Board.

Section 52.65 Orders

No changes are proposed for this section.

Section 52.66 Notification

This section would be amended to make only the permanent record of proceedings, as compiled in accordance with section 52.63(b), available for the applicant's inspection.

Section 52.67 Reconsideration

In paragraphs (a), (b), and (e), the term Chair would be substituted for the term Chairman. Paragraph (a)(1) would be amended for clarification. Paragraph (c) would be amended to better explain who can serve on a Board to reconsider a case. Paragraph (d) would be amended to make applications for reconsideration subject to the provisions in section 52.26 for permitting applicants to request extensions, submit evidence late, and alter their requests for relief.

Old Section 52.68 Time Limit for Final Action

This old section would be incorporated in proposed section 52.26.

Subpart H—Payment of Claims and Implementation of Orders

Section 52.71 Authority to Pay

No changes are proposed for this section.

Section 52.72 Implementation of Orders

This section would be renamed for clarity and the words ''shall transmit'' would be substituted for the word ''transmits.'' Paragraph (b) would be amended to specify that applicants must furnish to the Board or to the Coast Guard information needed to determine the proper parties to a claim. Paragraph (c) would be amended to notify applicants that monetary awards resulting from record corrections may be reduced by setoffs required by law or regulation.

Section 52.73 Interpretation

This section would be amended to provide that the Coast Guard should return a decision to the Board for clarification or technical amendment if it believes that the Board's order is incomplete because of an oversight.

Section 52.74 Report of Settlement

No changes are proposed for this section.

Subpart I—Public Access to Decisions

The old Subpart I—Miscellaneous Provisions would be repositioned and renamed as Subpart E—Submissions by the Coast Guard and Other Offices.

Section 52.81 Reading Room and Index

This new section would inform the public of the availability of copies of its final decisions, redacted to protect the privacy of applicants, for public review in the Board's reading room and on the Web.

Regulatory Analyses and Notices

Executive Order 12866

This proposed rule does not constitute a significant rule under Executive Order 12866 or the Department's Regulatory Policies and Procedures. The costs of these procedural changes would be negligible, their effect on industry would be negligible, and they are not of general policy interest.

Regulatory Flexibility Act and Federalism

Under 5 U.S.C. 604, we certify that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because it would affect only the procedures followed by the Board, the Coast Guard, and applicants in the submission and processing of applications for correction of individuals' personal military records. There are no Federalism factors to warrant the preparation of a Federalism assessment.

Paperwork Reduction Act

This NPRM does not propose any information collection requirements subject to review under the Paperwork Reduction Act.

Lists of Subjects in 33 CFR Part 52

Military records.

Issued this 26th day of November 2002 at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to revise 33 CFR Part 52 to read as follows:

PART 52—BOARD FOR CORRECTION OF MILITARY RECORDS OF THE COAST GUARD

Subpart A—Purpose and Authority

Sec.
52.1 Purpose.
52.2 Authority.

Subpart B—Establishment, Function, and Jurisdiction of Board

52.11 Establishment and composition.
52.12 Function.
52.13 Jurisdiction.

Subpart C—General Provisions Regarding Applications

52.21 General requirements.
52.22 Time limit for filing application.
52.23 Counsel.
52.24 Evidence and burden of proof.
52.25 Access to official records.
52.26 Right to timely decision; effect of requests for extensions, changes in requests for relief, and late submissions of evidence.
52.27 Withdrawal of application.
52.28 Stay of proceedings.

Subpart D—Consideration of Application and Administrative Closure

52.31 Consideration of application.
52.32 Administrative closure.

Subpart E—Submissions by the Coast Guard and Other Offices

52.41 Assistance.
52.42 Views of the Coast Guard.
52.43 Requests for further information; submissions of classified, privileged, and sensitive information.

Subpart F—Hearings

52.51 General provision.
52.52 Notice of hearing.
52.53 Witnesses.
52.54 Expenses.
52.55 Nonappearance.
52.56 Conduct of hearing.
52.57 Record of hearing.

Subpart G—Judgment and Disposition

52.61 Deliberations and decision.
52.62 Minority report.
52.63 Record of proceedings.
52.64 Final action.
52.65 Orders.
52.66 Notification.
52.67 Reconsideration.

Subpart H—Payment of Claims and Implementation of Orders

52.71 Authority to pay.
52.72 Implementation of orders.
52.73 Interpretation.
52.74 Report of settlement.

Subpart I—Public Access to Decisions

52.81 Reading room and index.

Authority: 10 U.S.C. 1552, 14 U.S.C. 425.

Subpart A—Purpose and Authority

§ 52.1 Purpose.

This part establishes the procedure for application for correction of military records of the Coast Guard, for consideration of applications by the Department of Transportation Board for Correction of Military Records of the Coast Guard (hereinafter ''the Board''), and for settling claims or determining monetary benefits.

§ 52.2 Authority.

(a) The Secretary of Transportation, acting through boards of civilians, is authorized to correct any military record of the Coast Guard when the Secretary considers it necessary to correct an error or remove an injustice. 10 U.S.C. 1552. The Secretary shall ensure that final action on a complete application for correction is taken within 10 months of its receipt. 14 U.S.C. 425.

(b) Corrections made under this authority are final and conclusive on all officers of the Government except when procured by fraud. 10 U.S.C. 1552(a)(4).

Subpart B—Establishment, Function, and Jurisdiction of Board

§ 52.11 Establishment and composition.

(a) Pursuant to 10 U.S.C. 1552, the Board for Correction of Military Records of the Coast Guard is established in the Office of the Secretary of Transportation.

(b) The Secretary appoints a panel of civilian officers or employees of the Department of Transportation to serve as members of the Board, and designates one such member to serve as Chair of the Board. The Chair designates members from this panel to serve as the Board for each case requiring consideration by a Board. The Board consists of three members, and two members present constitute a quorum of the Board.

(c) The Deputy Chair of the Board exercises the functions prescribed by these regulations and such other duties as may be assigned by the Chair.

§ 52.12 Function.

The function of the Board is to consider all applications properly before it, together with all pertinent military records and any submission received from the Coast Guard or other Government office under subpart E, to determine:

(a) Whether an error has been made in the applicant's Coast Guard military record, whether the applicant has suffered an error or injustice as the result of an omission or commission in his or her record, or whether the applicant has suffered some manifest injustice in the treatment accorded him or her; and

(b) Whether the Board finds it necessary to change a military record to correct an error or remove an injustice.

§ 52.13 Jurisdiction.

(a) The Board has jurisdiction to review and determine all matters properly brought before it, consistent with existing law and such directives as may be issued by the Secretary.

(b) No application shall be considered by the Board until the applicant has exhausted all effective administrative remedies afforded under existing law or regulations, and such legal remedies as the Board may determine are practical, appropriate, and available to the applicant.

Subpart C—General Provisions Regarding Applications

§ 52.21 General Requirements.

(a) An application for correction of a Coast Guard record shall be submitted on DD Form 149 (Application for Correction of Military or Naval Record) or an exact copy thereof, and shall be addressed to: Chair, Board for Correction of Military Records of the Coast Guard (C–60), United States Department of Transportation, Washington, DC 20590. Forms and explanatory material may be obtained from the Chair of the Board.

(b) The application shall be signed by the person alleging error or injustice in his or her military record, except that an application may be signed by a family member or legal representative with respect to the record of a deceased, incapacitated, or missing person. The family member or legal representative must submit proof of his or her proper interest with the application.

(c) No application shall be docketed or processed until it is complete. An application for relief is complete when all of the following have been received by the Board:

(1) A signed DD Form 149, providing all necessary responses, including a specific allegation of error or injustice, accompanied by substantial evidence or information in support of such allegation;

(2) The military records of the applicant; and

(3) Any applicable military and Department of Veterans Affairs medical records.

(d) It is the applicant's responsibility to include his or her correct mailing address on the DD Form 149 and to inform the Chair in writing of any subsequent change of address until the Board or the Secretary takes final action on the application.

(e) Briefs in support of applications must be assembled in a manner that permits easy reproduction and may not exceed twenty-five double-spaced typewritten pages in a type size with no more than twelve characters per inch. This limitation does not apply to supporting documentary evidence. In complex cases, the Chair may waive this limitation.

§ 52.22 Time limit for filing application.

An application for correction of a record must be filed within three years after the applicant discovered or reasonably should have discovered the alleged error or injustice. If an

application is untimely, the applicant shall set forth reasons in the application why it is in the interest of justice for the Board to consider the application. An untimely application shall be denied unless the Board finds that sufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file timely.

§ 52.23 Counsel.

(a) Applicants may be represented by counsel at their own expense. Applicants whose cases are processed under the Whistleblower Protection Act and who are granted a hearing by the Board may be entitled to representation by a Coast Guard law specialist. 10 U.S.C. 1034(f)(3)(A).

(b) As used in this part, the term ''counsel'' includes attorneys who are members in good standing of any bar; accredited representatives of veterans' organizations recognized by the Secretary of Veterans Affairs pursuant to 38 U.S.C. 5902; and other persons who, in the opinion of the Chair, are competent to represent the applicant for correction. Whenever the term ''applicant'' is used in these rules, except in § 52.21(c), the term shall mean an applicant or his or her counsel.

§ 52.24 Evidence and burden of proof.

(a) It is the responsibility of the applicant to procure and submit with his or her application such evidence, including official records, as the applicant desires to present in support of his or her case. All such evidence should be submitted with the applicant's DD Form 149 in accordance with § 52.21(c)(1). Evidence submitted by an applicant after an application has been filed and docketed shall be considered late and its acceptance is subject to the provisions in §§ 52.26(a)(4) and (c).

(b) The Board begins its consideration of each case presuming administrative regularity on the part of Coast Guard and other Government officials. The applicant has the burden of proving the existence of an error or injustice by the preponderance of the evidence.

§ 52.25 Access to official records.

The applicant shall have such access to official records or to any information pertaining to the applicant which is in the custody of the Coast Guard as is provided in 49 CFR parts 7 and 10.

§ 52.26 Right to timely decision; effect of requests for extensions, changes in requests for relief, and late submissions of evidence.

(a) Each applicant has a right to have final action taken on his or her application within 10 months after all the elements of a complete application, as defined in § 52.21(c), have been received by the Board, unless the applicant

(1) Submits a written request, which is granted by the Chair, for an extension of a specific duration to seek counsel or additional evidence;

(2) Submits a written request, which is granted by the Chair, for an extension of the time provided for responding to the views of the Coast Guard in accordance with § 52.42(d);

(3) Submits a signed statement that is determined by the Chair to significantly amend the applicant's request for relief after the application has been docketed;

(4) Submits significant new evidence, as determined by the Chair, after the application has been docketed; or

(5) Is found by the Chair to have unreasonably delayed responding to a request for further information or evidence.

(b) If the applicant requests an extension in accordance with paragraphs (a)(1) or (a)(2) of this section or unreasonably delays responding to a request for further information or evidence in accordance with paragraph (a)(5) of this section, he or she shall have a right to have final action taken on the application for correction within 10 months of the application's completion plus all periods of extension granted to the applicant by the Chair and all periods of unreasonable delay.

(c) If the applicant significantly amends his or her request for relief or submits significant new evidence after the application has been docketed, in accordance with paragraphs (a)(3) or (a)(4) of this section, the application shall be considered newly complete as of the date the amended request for relief or new evidence is received, in which case the applicant shall have a right to have final action taken on the application within 10 months of the date the Board receives the amended request for relief or significant new evidence.

§ 52.27 Withdrawal of application.

The Chair may, at his or her discretion, permit the applicant to withdraw his or her application at any time before final action is taken under § 52.64. Any further consideration by the Board of the issues raised in the withdrawn application shall occur only upon the filing of a new application.

§ 52.28 Stay of proceedings.

An application to the Board for correction of a military record does not operate as a stay of any proceeding or administrative action taken with respect to or affecting the applicant.

Subpart D—Consideration of Application and Administrative Closure

§ 52.31 Consideration of application.

Each application shall be reviewed by the Chair to determine whether it meets the requirements of § 52.21 before it is docketed. The Chair shall decide in appropriate cases whether to grant a hearing or to recommend disposition on the merits without a hearing.

§ 52.32 Administrative closure.

(a) The Chair may administratively close a case after it has been docketed and at any time prior to its consideration by the Board if the Chair determines that:

(1) The application was erroneously docketed because the application did not meet the criteria under § 52.21;

(2) Effective relief cannot be granted by the Board;

(3) The Board does not have jurisdiction to determine the issues presented or the applicant has not exhausted an available administrative remedy, as required under § 52.13(b); or

(4) The Coast Guard has granted effective relief satisfactory to the applicant.

(b) Administrative closure does not constitute a denial of relief. Applicants who believe their cases should not have been administratively closed by the Chair may resubmit their applications with a request for further consideration and a statement explaining why the applicant believes his or her case should be docketed and considered by the Board. A request for further consideration shall be regarded as a new application for the purposes of §§ 52.21 and 52.26.

(c) If the Chair administratively closes a case, the applicant shall be advised of the reason and of the right to resubmit his or her application.

Subpart E—Submissions by the Coast Guard and Other Offices

§ 52.41 Assistance.

The Board may request such advice, opinion, assistance, or use of the facilities of any other bureau, board, or office of the Department of Transportation as the Board deems necessary.

§ 52.42 Views of the Coast Guard.

(a) The Board shall transmit to the Commandant of the Coast Guard or his or her delegate a copy of each application for relief submitted and docketed under subpart C of this part,

together with any briefs, memoranda, and documentary evidence submitted or obtained in the case.

(b) The Commandant of the Coast Guard or his or her delegate may forward to the Board a written advisory opinion presenting the views of the Coast Guard on any case before the Board.

(c) An advisory opinion furnished by the Coast Guard under this section shall not be binding upon the Board, but shall be considered by the Board, along with all other information and material submitted in the particular case, if it is received by the Board within 135 days of the date the application is complete. The Chair may, in his or her discretion, grant the Coast Guard an extension of the time provided for submitting the advisory opinion.

(d) The Board shall promptly send a copy of each submission made by the Coast Guard under this section to the applicant involved, subject to the limitations in §§ 52.42(c) and 52.43(c). Each applicant has 30 days, from the date the Board sends the submission, to submit to the Board a written rebuttal or response to the Coast Guard's advisory opinion or a written request for an extension of the time to respond, subject to the provisions in § 52.26.

(e) Advisory opinions submitted by the Coast Guard and briefs submitted by applicants in response to the advisory opinions of the Coast Guard must be assembled in a manner that permits easy reproduction and may not exceed fifteen double-spaced typewritten pages in a type size with no more than twelve characters per inch. This limitation does not apply to supporting documentary evidence. In complex cases, the Chair may waive this limitation.

§ 52.43 Requests for further information; submissions of classified, privileged, and sensitive information.

(a) The Chair or the Board may ask the applicant to submit additional information not included in the application or response to the advisory opinion.

(b) The Chair or the Board may ask the Coast Guard or other Government office to submit any information, including reports of investigations, that the Chair or the Board deems relevant to an applicant's case.

(c) Whenever the Coast Guard or other Government office submits classified, privileged, or sensitive information to the Board in accordance with paragraph (b) of this section or § 52.42(b), it shall identify such information and also provide the Board with a copy of that part of the information that would be released to the applicant by the Coast Guard or other Government office if he or she requested it under 49 CFR parts 7 and 10. The Board shall forward only this redacted copy to the applicant.

Subpart F—Hearings

§ 52.51 General provision.

In each case in which the Chair determines that a hearing is warranted, the applicant will be entitled to be heard orally in person, by counsel, or in person with counsel.

§ 52.52 Notice of hearing.

(a) If the Chair determines that a hearing is warranted, the Chair shall notify the applicant that a hearing has been granted.

(b) The date of hearing shall be not less than 21 days from the date of this notification. Written notice stating the date, time, and place of the hearing shall be given to the applicant and the Coast Guard.

§ 52.53 Witnesses.

(a) In any case in which the Chair has granted a hearing, the applicant shall have the right to present witnesses.

(b) It is the responsibility of the applicant to notify his or her witnesses and to ensure their appearance at the date, time, and place set for the hearing.

§ 52.54 Expenses.

No expenses of any nature whatsoever incurred by an applicant, his or her counsel, witnesses, or others acting on behalf of the applicant shall be paid by the Government, except that an applicant may be entitled to representation by a Coast Guard law specialist if the case has been processed under the Whistleblower Protection Act. 10 U.S.C. 1034(f)(3)(A).

§ 52.55 Nonappearance.

An applicant who fails without good cause to appear in person or by counsel at the appointed date, time, and place for hearing, is deemed to have waived the right to a hearing. The application is then considered by the Board on the basis of all the material of record.

§ 52.56 Conduct of hearing.

(a) The Chair or the Chair's designee shall conduct a hearing so as to ensure a full and fair presentation of the evidence.

(b) The hearing is not limited by legal rules of evidence, but reasonable standards of competency, relevancy, and materiality are observed for the receipt and consideration of evidence.

(c) All testimony shall be given under oath or affirmation.

§ 52.57 Record of hearing.

A hearing pursuant to this subpart in open session shall be recorded verbatim and, at the discretion of the Board or direction of the Secretary, shall be transcribed.

Subpart G—Judgment and Disposition

§ 52.61 Deliberations and decision.

(a) The Board is convened at the call of the Chair and its meetings are recessed or adjourned by order of the Chair. Only members of the Board and its staff may be present during the deliberations of the Board. The Board's deliberations are conducted in executive session and are not reported.

(b) When the Board finds that the facts have not been fully and fairly disclosed by the records, testimony, and any other evidence before the Board, the Board may request the applicant and/or the Coast Guard to obtain and submit such further evidence as it considers essential to a complete and impartial understanding of the facts and issues.

(c) Following the receipt of all evidence, the Chair shall cause to be prepared and shall submit to the Board for its consideration a draft decision containing proposed findings and conclusions and a proposed order. A majority vote of the members of the Board present at a meeting on any matter relating to a draft decision before the Board shall constitute the action of the Board. If a draft decision is approved by the Board, it shall become a decision of the Board.

(d) The decision of the Board shall specify any change, correction, or modification of records to be made by the Coast Guard, and any other action deemed necessary to provide full and effective relief, which may include directing the Coast Guard to convene medical boards.

(e) If the Board deems it necessary to submit a comment or recommendation to the Secretary as to a matter arising from, but not directly related to, the issues in a case, it does so by separate communication.

§ 52.62 Minority report.

In case of disagreement among Board members, a minority report may be submitted dissenting from or concurring with the decision of the Board.

§ 52.63 Record of proceedings.

(a) The Board shall prepare a complete record of each proceeding. The record shall include the application for relief; the written views of the Coast Guard, if any; any transcript of testimony; affidavits and documents considered by the Board; briefs and

written arguments filed in the case; the findings, decisions, and recommendations of the Board; minority reports, if any; and all other materials necessary to reflect a true and complete history of the proceedings.

(b) After final action has been taken on an application in accordance with § 52.64, any classified, privileged, or sensitive information in the record of proceedings that has been provided by the Coast Guard or another Government office in accordance with §§ 52.42 or 52.43 shall be returned by the Board to the office from which it was received. Only a copy of the information provided by the Coast Guard or other Government office for release to the applicant in accordance with § 52.43(c) shall be retained in the permanent record of proceedings after final action is taken.

§ 52.64 Final action.

(a) The Board, provided that it acts unanimously, may take final action on behalf of the Secretary, pursuant to 10 U.S.C. 1552, as follows:

(1) The Board may deny an application for the correction of military records.

(2) Unless the Coast Guard, in submitting its views pursuant to § 52.42(b), identifies and describes a significant issue of Coast Guard policy challenged in the application, the Board may approve an application for the correction of military records in any of the following categories:

(i) An application to correct an enlistment or reenlistment contract or agreement to extend an enlistment for the purpose of effecting or increasing entitlement to a Selective Reenlistment Bonus;

(ii) An application to modify an election to participate in the Survivor Benefit Plan;

(iii) An application to change a reenlistment eligibility code;

(iv) An application to correct the character of, or reason for, a discharge or separation; or

(v) An application to receive a medal or award.

(3) The Board may approve any application for correction of military records not included in one of the categories in paragraph (a)(2) of this section, if the Coast Guard recommends the same or substantially same relief as that requested by the applicant.

(b) Except in cases where the Board takes final action under paragraph (a) of this section, the Board shall forward the record of its proceedings to the Secretary, who may approve, disapprove, or concur in the decision of the Board or the minority report, if any, either in whole or in part, and amend the order of the Board accordingly, or return the case to the Board for additional consideration. After taking final action, the Secretary shall send any such statement and the record of proceedings to the Board for disposition.

§ 52.65 Orders.

(a) The Board shall issue such orders or directives as may be necessary to carry out a final action.

(b) The Board may ask the Coast Guard to submit a written report to the Board specifying the action taken and the date thereof with respect to any final action.

(c) Unless doing so is likely to nullify the relief granted, copies of the final decision shall be placed in the military record of the applicant.

§ 52.66 Notification.

After final action is taken under § 52.64, the Board shall send a copy of the final decision to the applicant. The applicant may inspect the permanent record of proceedings at Board offices.

§ 52.67 Reconsideration.

(a) Reconsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section.

(1) An applicant presents evidence or information that was not previously considered by the Board and that could result in a determination other than that originally made. Such new evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or

(2) An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

(b) The Chair shall docket a request for reconsideration of a final decision if it meets the requirements of paragraph (a)(1) or (a)(2) of this section. If neither of these requirements is met, the Chair shall not docket such request.

(c) The Board shall consider each application for reconsideration that has been docketed. None of the Board members who served on the Board that considered an applicant's original application for correction shall serve on the Board that decides the applicant's application upon reconsideration.

(d) Action by the Board on a docketed application for reconsideration is subject to §§ 52.26 and 52.64(b).

(e) An applicant's request for reconsideration must be filed within two years after the issuance of a final decision, except as otherwise required by law. If the Chair dockets an applicant's request for reconsideration, the two-year requirement may be waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.

Subpart H—Payment of Claims and Implementation of Orders

§ 52.71 Authority to pay.

(a) The Coast Guard is authorized to pay the claims of any person as the result of any action heretofore or hereafter taken under 10 U.S.C. 1552.

(b) The Coast Guard is not authorized to pay any claim heretofore compensated by Congress through enactment of private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

§ 52.72 Implementation of orders.

(a) In each case the Board shall transmit a copy of its decision or the Secretary's decision to the proper Coast Guard authority for determination of monetary benefits due, if any, as a result of the action of the Board and for corrections of the military record ordered by the Board.

(b) Upon request, the claimant is required to furnish to the Board or to the Coast Guard any information necessary to determine the proper parties to the claim for payment under applicable provisions of law.

(c) Appropriate records shall be examined in light of the Board's decision to determine all amounts which may be due. Amounts found due are subject to setoff in the amount of any existing indebtedness to the Government arising from Coast Guard service and to other setoffs required by law or regulation.

(d) At the time of payment, the claimant shall be advised as to the nature and amount of the various benefits represented by the total settlement, and of the fact that acceptance of the settlement constitutes a complete release by the claimant of any claim against the United States on account of the correction of record ordered by the Board.

§ 52.73 Interpretation.

If the intent or import of the final decision is not clear to the Coast Guard, if the Coast Guard believes that executing all or part of the order in the

final decision is beyond the Coast Guard's authority, or if the Coast Guard believes that the order is incomplete because of an oversight, the final decision shall be returned to the Board for clarification or technical amendment.

§ 52.74 Report of settlement.

When payment is made pursuant to the order of the Board, the Board may request the Coast Guard to notify it of the name of any person to whom payment was made and of the amount of the payment.

Subpart I—Public Access to Decisions

§ 52.81 Reading room and index.

After deleting only so much personal information as is necessary to prevent an unwarranted invasion of privacy of the applicant or other persons mentioned in the final decision of the Board, a redacted copy of each final decision shall be indexed by subject and made available for review and copying at a public reading room. Final decisions created on or after November 1, 1996, shall be made available by electronic means. 5 U.S.C. 552.

[FR Doc. 02–30933 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. VI3–2; FRL–7420–5]

Approval and Promulgation of State Plans for Designated Facilities; Virgin Islands

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the Government of the United States Virgin Islands. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing small municipal waste combustion (MWC) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing small MWC units in the state and it submits a negative declaration letter in place of the State Plan.

DATES: Written comments must be received on or before January 10, 2003.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

A copy of the Virgin Islands submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637–4249. Alternatively, appointments may be arranged via e-mail by sending a message to Demian P. Ellis at *Ellis.Demian@epa.gov.* The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007–1866.

A copy of the Virgin Islands submittal is also available for inspection at the following location:

Virgin Islands Department of Planning and Natural Resources, Division of Environmental Protection, Cyril E. King Airport, Terminal Building, 2nd Floor, St. Thomas, USVI 00802.

FOR FURTHER INFORMATION CONTACT: Demian P. Ellis, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, Telephone, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules Section of this **Federal Register**.

The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the Government of the United States Virgin Islands (Virgin Islands) on July 17, 2002. The negative declaration officially certifies to EPA that, to the best of the Virgin Islands' knowledge, there are no small municipal waste combustion units in operation within the Territory. This negative declaration concerns existing small municipal waste combustion units throughout the Territory of the U.S. Virgin Islands. The negative declaration satisfies the Federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled ''Emission Guidelines for Existing Small Municipal Waste Combustion Units'' (65 FR 76378, December 6, 2000).

Dated: November 15, 2002.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 02–31238 Filed 12–10–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE TREASURY

48 CFR Chapter 10

RIN 1505–AA89

Department of the Treasury Acquisition Regulation

AGENCY: Office of the Procurement Executive, Treasury.

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of the Treasury (''Treasury'') is proposing to revise the Department of the Treasury Acquisition Regulation (DTAR) in its entirety. Treasury has rewritten the DTAR into plain English. The DTAR includes both policy direction and regulatory guidance. Only regulatory guidance is being published for public comment. Treasury has also updated the DTAR to reflect changes to the Federal Acquisition Regulation (FAR) and to establish and encourage participation in the Treasury Mentor-Protégé Program.

DATES: Written comments must be submitted to the address shown below by January 10, 2003.

ADDRESSES: Mail comments to the Department of the Treasury, Office of the Procurement Executive, ATTN: Angelie Jackson, 1500 Pennsylvania Ave., NW., c/o 1310 G St., NW., Suite 400W, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Angelie Jackson, Department of the Treasury, Office of the Procurement Executive, (202) 622–0245.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Section by Section Analysis.
III. Procedural Requirements.
A. Review under Executive Order 12866.
B. Review under Executive Order 12988.
C. Review under the Regulatory Flexibility Act.
D. Review under the Paperwork Reduction Act.
E. Review under the National Environmental Policy Act.
F. Review under Executive Order 13132.
G. Review under the Unfunded Mandates Reform Act of 1995.
H. Treasury and General Government Appropriation Act, 1999.
IV. Opportunity for Public Comment.

I. Background

Treasury initiated a review and rewrite of the Department of the Treasury Acquisition Regulation (DTAR). The DTAR, as reissued, uses plain English to improve clarity and understanding; eliminates internal operating procedures that do not have a significant effect beyond Treasury; establishes the Treasury Mentor-Protégé

Program and, eliminates coverage that is obsolete or duplicates the FAR. Treasury intends the reissued DTAR to be simple for contractors, offerors, and Treasury contracting personnel to use.

II. Section by Section Analysis

Sections 1001.101, 1001.102, 1001.104, 1001.105 and 1001.106 set forth basic policies and general information about the Department of the Treasury Acquisition Regulation system including purpose, guiding principles, applicability, issuance, arrangement, numbering, and dissemination. Section 1002.101 provides definitions for common use words. Section 1003.570 describes 31 U.S.C. 333, which prohibits contractors from using Treasury's name for publicity purposes. Section 1003.901 defines the FAR term ''authorized official of an agency.'' Section 1004.470 identifies investigative requirements for contractors. In section 1011.103, Bureau Chief Procurement Officers may require offerors to make required demonstrations.

Sections 1005.202, 1019.811, 1052.219–18 and 1052.219–72 provide guidance and contract clauses based on the Memorandum of Understanding with the Small Business Administration allowing Treasury to contract directly with 8(a) contractors. Sections 1019.202–70, 1052.219–73, and 1052.219–75 provide for the Treasury Mentor-Protégé Program that assists qualified small businesses to receive developmental assistance from Treasury prime contractors in order to increase the base of small businesses eligible to perform Treasury contracts and subcontracts. Sections 1019.708, 1052.219–70 and 1052.219–71 provide that a provision and a clause be placed in all respective solicitations and contracts requiring a subcontracting plan.

Section 1028.106 designates the contracting officer as the designee of the head of the agency. Section 1028.307 provides for group insurance plans to be provided to the contracting officer. Section 1033.201 defines the General Services Board of Contract Appeals as Treasury's Agency Board. Section 1033.210 encourages the use of Alternate Disputes Resolution procedures.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action was not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866 as supplemented by Executive Order 13132, and is not a major rule under 5 U.S.C. 804.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Treasury has completed the required review and determined that this proposed regulation meets the relevant standards of Executive Order 12988 as supplemented by Executive Order 13132.

C. Review Under the Regulatory Flexibility Act

This proposed regulation would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, and *et seq.* The analysis requirement of the Act does not apply if the agency certifies that the rule, if promulgated, will not have a significant impact of a substantial number of small entities. The Mentor-Protégé Program does apply to large business and small business firms that receive a form of incentive for assuming the role of mentor to small businesses, other small disadvantaged businesses, qualified HUBZone small businesses, small businesses owned and controlled by service disabled veterans, and small women-owned businesses. It is expected that the protégé entities would directly benefit from the forms of mentoring provided for in this rule.

The other revisions do not add any new requirements, but restate existing requirements in plain English and provide consistency with the FAR.

D. Review Under the Paperwork Reduction Act

This reissued DTAR contains information collection requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) that were approved previously by OMB and assigned the contract numbers shown in DTAR section 1001.106.

E. Review Under the National Environmental Policy Act

Treasury has concluded that this proposed rule would not individually or cumulatively have significant impact on the human environment, as determined by Treasury's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, no environmental impact statement or environmental assessment is required pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 requires when formulating and implementing regulations, legislation, and any other policy actions that have federalism implications, that agencies must follow prescribed principles and criteria. Treasury has determined that this proposed rule does not contain federalism implications and would not preempt State laws.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a federal mandate with costs to State, local or tribal governments, or to the private sector of $100 million or more. This proposed rule would only affect private sector entities and the impact is less than $100 million.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriation, 1999 (Public Law 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, Treasury concluded that it is not necessary to prepare a Family Policymaking Assessment.

IV. Opportunity for Public Comment

At the beginning of this proposed rule, Treasury provides for a comment period and sets forth the address for submitting written comments. Treasury is not scheduling a public hearing because there are no significant issues of fact or law that would warrant such a hearing.

List of Subjects in 48 CFR Chapter 10

Government acquisition.

Corey M. Rindner,

Director, Office of the Procurement Executive.

Accordingly, the Department of the Treasury revises 48 CFR chapter 10, to read as follows:

CHAPTER 10—DEPARTMENT OF THE TREASURY

SUBCHAPTER A—GENERAL

Part

1001 Department of the Treasury Acquisition Regulation (DTAR) System

1002 Definitions of Words and Terms

1003 Improper Business Practices and Personal Conflicts of Interest

1004 Administrative Matters

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

1005 Publicizing Contract Actions

1011 Describing Agency Needs

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

1019 Small Business Programs

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

1028 Bonds and Insurance
1033 Protests, Disputes, and Appeals

SUBCHAPTER H—CLAUSES AND FORMS

1052 Solicitation Provisions and Contract Clauses

SUBCHAPTER A—GENERAL

PART 1001—DEPARTMENT OF THE TREASURY ACQUISITION REGULATION (DTAR) SYSTEM

Subpart 1001.1—Purpose, Authority, Issuance

Sec.
1001.101 Purpose.
1001.104 Applicability.
1001.105 Issuance.
1001.105–1 Publications and code arrangement.
1001.105–2 Arrangement of regulations.
1001.105–3 Copies.
1001.106 OMB Approval under the Paperwork Reduction Act.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1001.1—Purpose, Authority, Issuance

1001.101 Purpose.

This subpart establishes chapter 10, the Department of the Treasury Acquisition Regulation (DTAR), within title 48 of the Federal Acquisition Regulation (FAR) System. The DTAR contains policies and procedures that supplement FAR coverage and directly affect the contractual relationship between the Department of the Treasury and its business partners (*e.g.*, prospective offerors/bidders and contractors). When FAR coverage is adequate, there will be no corresponding DTAR coverage.

1001.104 Applicability.

The FAR and DTAR apply to all acquisitions of supplies and services, which obligate appropriated funds. For acquisitions made from non-appropriated funds, the Senior Procurement Executive will determine the rules and procedures that will apply. The DTAR does not apply to the acquisitions of the U.S. Mint.

1001.105 Issuance.

1001.105–1 Publication and code arrangement.

The DTAR and its subsequent changes will be published in the **Federal Register** and codified in the Code of Federal Regulations (CFR). The DTAR will be issued as 48 CFR chapter 10.

1001.105–2 Arrangement of regulations.

(a) *References and citations.* The DTAR is divided into the same parts, subparts, sections, subsections, and paragraphs as the FAR except that 10 or 100 will precede the DTAR citation so that there are four numbers to the left of the first decimal. References to DTAR material must be made in a manner similar to that prescribed by FAR 1.105–2(c).

1001.105–3 Copies.

Copies of the DTAR in **Federal Register** or CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

1001.106 OMB Approval under the Paperwork Reduction Act.

OMB has assigned the following control numbers that must appear on the upper right-hand corner of the face page of each solicitation, contract, modification and order: OMB Control No. 1505–0081 (Offeror submissions), OMB Control No. 1505–0080 (Contractor submissions), and OMB Control No. 1505–0107 (Protests). OMB regulations and OMB's approval and assignment of control numbers are conditioned upon Treasury bureaus not requiring more than three copies (including the original) of any document of information. OMB has granted a waiver to permit the Department to require up to eight copies of proposal packages, including proprietary data, for solicitations, provided that contractors who submit only an original and two copies will not be placed at a disadvantage.

PART 1002—DEFINITIONS OF WORDS AND TERMS

Subpart 1002.1—Definitions

Sec.
1002.101 Definitions.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1002.1—Definitions

1002.101 Definitions.

Bureau Chief Procurement Officer (BCPO) means the senior acquisition person at each bureau's headquarters. Within the Internal Revenue Service, this may be the Director, Procurement or the Deputy Director, Procurement.

Legal counsel means the Treasury or bureau office providing legal services to the contracting activity.

Senior Procurement Executive (SPE) for the Department of the Treasury is the Director, Office of the Procurement Executive.

PART 1003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1003.9—Whistleblower Protections for Contractor Employees

1003.901 Definitions.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1003.9—Whistleblower Protections for Contractor Employees

1003.901 Definitions.

Authorized official of an agency means Treasury's SPE.

PART 1004—ADMINISTRATIVE MATTERS

Subpart 1004.4—Safeguarding Classified Information within Industry

Sec.
1004.470 Investigative Requirements for Contractors.
1.1 General.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1004.4—Safeguarding Classified Information within Industry

1004.470 Investigative Requirements for Contractors.

1004.470–1 General.

Contract employees not requiring access to classified information must meet the investigative requirements of chapter II, section 2 of TD P 71–10, Department of the Treasury Security Manual.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1005—PUBLICIZING CONTRACT ACTIONS

Subpart 1005.2—Synopses of Proposed Contract Actions

Sec.
1005.202 Exceptions.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1005.2—Synopses of Proposed Contract Actions

1005.202 Exceptions.

(b)(1) The Office of Federal Procurement Policy and the Small Business Administration have extended the Pilot Program on Acquisition of Services from Small Businesses. It allows for a waiver of the synopsis requirement for services from competitive small businesses between $25,000 and $100,000. Contracting officers may waive the synopsis

requirement after determining the following:

(i) Acquisitions covered by the waiver are for services (excluding those exempted from set-asides under the Small Business Competitiveness Demonstration Program) in amounts over $25,000, but not exceeding the simplified acquisition threshold ($100,000), of which supply items are expected to constitute less than 20 percent of the value of the contract;

(ii) The covered acquisitions will be set-aside for small businesses;

(iii) Quotes or offers for covered acquisitions will be solicited and obtained from a minimum of five small business concerns;

(iv) The Procurement Marketing and Access Network (PRO-Net) will be used to identify and solicit bids from a minimum of five small businesses; and

(v) If practicable, two sources not included in the previous solicitation for the same services will be solicited.

PART 1011—DESCRIBING AGENCY NEEDS

Subpart 1011.1—Selecting and Developing Requirements Documents

Sec.
1011.103 Market acceptance.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1011.1—Selecting and Developing Requirements Documents

1011.103 Market acceptance.

(a) BCPOs can act on behalf of the head of the agency in this subpart only. BCPOs, under appropriate circumstances, require offerors to make the required demonstrations.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1019—SMALL BUSINESS PROGRAMS

Subpart 1019.2—Policies

Sec.
1019.202 Specific policies.
1019.202–70 The Treasury Mentor-Protégé Program.
1019.202–70–3 Non affiliation.
1019.202–70–4 General policy.
1019.202–70–5 Incentives for prime contractor participation.
1019.202–70–7 Mentor firms.
1019.202–70–8 Protégé firms.
1019.202–70–9 Selection of protégé firms.
1019.202–70–10 Application process for mentor firms to participate in the program.
1019.202–70–11 OSBD review and approval process of agreement.
1019.202–70–12 Agreement contents.
1019.202–70–13 Developmental assistance.
1019.202–70–14 Obligation.
1019.202–70–16 Solicitation provisions and contract clauses.

Subpart 1019.7—The Small Business Subcontracting Program

Sec.
1019.708 Contract clauses.
1019.708–70 Solicitation provisions and contract clauses.

Subpart 1019.8—Contracting with the Small Business Administration (The 8(a) Program)

Sec.
1019.811 Preparing the contracts.
1019.811–3 Contract clauses.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1019.2—Policies

1019.202 Specific policies.

1019.202–70 The Treasury Mentor-Protégé Program.

1019.202–70–3 Non-affiliation.

For purposes of the Small Business Act, a protégé firm may not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance referred to in DTAR 1019.202–70–13 from such mentor firm under the Program.

1019.202–70–4 General policy.

(a) Eligible prime contractors, not included on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'', that are approved as mentors will enter into agreements with eligible protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of protégés to perform as contractors or subcontractors.

(b) A firm's status as a protégé under a Treasury contract must not have an effect on the firm's eligibility to seek other contracts or subcontracts.

1019.202–70–5 Incentives for prime contractor participation.

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(E), Treasury is authorized to provide appropriate incentives to encourage subcontracting opportunities consistent with the efficient and economical performance of the contract. Proposed mentor-protégé efforts will be considered during the evaluation of such negotiated, competitive offers. Contracting officers must provide, as an incentive, a bonus score, not to exceed 5% of the relative importance assigned to the technical/management factors.

(b) A mentor's performance will be evaluated against the criteria described in DTAR 1052.219–75.

(c) Before awarding a contract that requires a subcontracting plan, the existence of a mentor-protégé arrangement, and performance (if any) under an existing arrangement, must be considered by the contracting officer in:

(1) Evaluating the quality of a proposed subcontracting plan under FAR 19.705–4; and

(2) Evaluating the contractor compliance with the subcontracting plans submitted in previous contracts as a factor in determining contractor responsibility under FAR 19.705–5(a)(1).

(d) Mentor-protégé arrangements may provide the government with greater assurance that a protégé subcontractor will be able to perform under the contract.

(e) The Office of Small Business Development (OSBD) Mentoring Award is a non-monetary award that will be presented (annually or as often as appropriate) to the mentoring firm providing the most effective developmental support of a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Director, Office of Small Business Development.

1019.202–70–7 Mentor firms.

A mentor firm may be either a large or small business, eligible for award of a Government contract that can provide developmental assistance to enhance the capabilities of protégés to perform as subcontractors. Mentors will be encouraged to enter into arrangements with protégés in addition to firms with whom they have established business relationships.

1019.202–70–8 Protégé firms.

(a) For selection as a protégé, a firm must be:

(1) A small business, women-owned small business, small disadvantaged business, small business owned and controlled by service disabled veterans, or qualified HUBZone small business:

(2) ''Small'' in the NAICS for the services or supplies to be provided by the protégé under its subcontract to the mentor; and

(3) Eligible for receipt of Government contracts.

(b) Except for small disadvantaged business, or qualified HUBZone small business firms, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may rely in good faith on written representations by potential protégés that they meet the specified eligibility requirements. The small disadvantaged business and hubzone status eligibility and

documentation requirements are determined according to FAR 19.304 and FAR 19.1303, respectively.

(c) Protégés may not have multiple mentors unless approved, in writing, by the Director, Office of Small Business Development (OSBD). Protégés participating in other agency mentor-protégé programs in addition to the Treasury Program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

1019.708–70–9 Selection of protégé firms.

(a) Mentor firms will be solely responsible for selecting protégé firms. The mentor is encouraged to identify and select the types of protégé firms listed in 1019.202–70–7. Mentor firms may have multiple protégés.

(b) The selection of protégé firms by mentor firms may not be protested. Any protest regarding the size or eligibility status of an entity selected by a mentor to be a protégé must be referred solely to Treasury's OSBD for resolution. Treasury, at its discretion, may seek an advisory opinion from the Small Business Administration (SBA).

1019.202–70–10 Application process for mentor firms to participate in the program.

(a) Firms interested in becoming a mentor firm may apply in writing to Treasury's OSBD. The application will be evaluated based upon the description of the nature and extent of technical and managerial support proposed as well as the extent of other developmental assistance in the form of equity investment, loans, joint-venture support, and traditional subcontracting support.

(b) A proposed mentor will submit the information listed in DTAR 1019.202–70–12 for inclusion in a mentor-protégé agreement.

1019.202–70–11 OSBD review and approval process of agreement.

(a) OSBD will review the information specified in DTAR 1019.202–70–12. The OSBD review will be completed no later than 30 calendar days after receipt.

(b) Upon completion of the review, the mentor may implement the developmental assistance program.

(c) An approved agreement will be incorporated into the mentor firm's contract(s) with Treasury.

(d) If the OSBD disapproves the agreement, the mentor may provide additional information for reconsideration. Upon finding deficiencies that the OSBD considers correctable, the OSBD will notify the mentor and provide a list of defects. Any additional information or corrections requested will be provided within 30 calendar days. The review of any supplemental material will be completed within 30 calendar days after receipt by the OSBD. When submission of additional data is required during a proposal evaluation for a new contract award, shorter timeframes for submission, review and re-evaluation for approval may be authorized by the OSBD.

(e) The agreement defines the relationship between the mentor and protégé firms only. The agreement itself does not create any privity of contract between the mentor or protégé and Treasury.

1019.202–70–12 Agreement contents.

The contents of the agreement will contain:

(a) Names and addresses of mentor and protégé firms and a point of contact within both firms who will oversee the agreement;

(b) Procedures for the mentor firm to notify the protégé firm, OSBD and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program;

(c) Procedures for a protégé firm to notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the mentor-protégé agreement. The mentor must notify the OSBD and the contracting officer immediately upon receipt of such notice from the protégé;

(d) Each proposed mentor-protégé relationship must include information on the mentor's ability to provide developmental assistance to the protégé and how that assistance will potentially increase contracting and subcontracting opportunities for the protégé firm;

(e) A description of the type of developmental Program that will be provided by the mentor firm to the protégé firm, to include a description of the potential subcontract work, and a schedule for providing assistance and criteria for evaluation of the protégés developmental success;

(f) A listing of the types and dollar amounts of subcontracts that may be awarded to the protégé firm;

(g) Program participation term;

(h) Termination procedures;

(i) Plan for accomplishing work should the agreement be terminated; and,

(j) Other terms and conditions, as appropriate.

1019.202–70–13 Developmental assistance.

The forms of developmental assistance a mentor can provide to a protégé include:

(a) Management guidance relating to financial management, organizational management, overall business management/planning, business development, and technical assistance;

(b) Loans;

(c) Rent-free use of facilities and/or equipment;

(d) Property;

(e) Temporary assignment of personnel to protégé for purpose of training; and,

(f) Any other types of mutually beneficial assistance.

1019.202–70–14 Obligation.

(a) Mentor or protégé firms may voluntarily withdraw from the Mentor-Protégé Program. However, such withdrawal will not impact the program mission and contract requirements under the prime contract.

(b) At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and protégé must formally brief the Department of the Treasury team regarding program accomplishments as pertains to the approved agreement. Individual briefings may be conducted, at the request of either party. Treasury will evaluate these reports by considering the following:

(1) Specific actions taken by the mentor, during the evaluation period, to increase the participation of protégés as suppliers to the Federal government and to commercial entities;

(2) Specific actions taken by the mentor, during the evaluation period, to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(3) To what extent the protégé has met the developmental objectives in the agreement; and,

(4) To what extent the mentor firm's participation in the Mentor-Protégé Program resulted in the protégé receiving contract(s) and subcontract(s) from private firms and agencies other than the Department of the Treasury.

(c) Mentor and protégé firms must submit an evaluation to the OSBD at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Mentor-Protégé Program, whichever comes first.

1019.202–70–16 Solicitation provisions and contract clauses.

(a) Insert the provision at DTAR 1052.219–73, Department of the Treasury Mentor-Protégé Program, in all unrestricted solicitations exceeding $500,000 ($1,000,000 for construction) that offer subcontracting possibilities.

(d) Insert the clause at DTAR 1052.219–

75, Mentor Requirements and Evaluation, in contracts where the prime contractor is a participant in the Treasury Mentor-Protégé Program.

Subpart 1019.7—The Small Business Subcontracting Program

1019.708 Contract clauses.

1019.708–70 Solicitation provisions and contract clauses.

(a) Insert the clause at DTAR 1052.219–70, SF 294 and SF 295 Reporting, in all solicitations and contracts requiring a subcontracting plan.

(a) Insert the provision at DTAR 1052.219–71, Subcontracting Plan, in all solicitations requiring a subcontracting plan.

Subpart 1019.8—Contracting with the Small Business Administration (The 8(a) Program)

1019.811 Preparing the contracts.

1019.811–3 Contract clauses.

(d)(3) Insert the clause at DTAR 1052.219–18, Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation), for paragraph (c) of FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, in all solicitations and contracts that exceed $100,000 and are processed under DTAR 1019.8.

(f) Insert the clause at DTAR 1052.219–72, section 8(a) Direct Award, in solicitations and contracts that exceed $100,000 and are processed under DTAR 1019.8 for paragraph (c) of FAR 52.219–11, Special 8(a) Subcontract Conditions; FAR 52.219–12, Special 8(a) Subcontract Conditions; and FAR 52.219–17, section 8(a) Award.

Subchapter E—General Contracting Requirements

PART 1028—BONDS AND INSURANCE

Subpart 1028.1—Bonds

Sec.
1028.106 Administration.
1028.106–6 Furnishing information.

Subpart 1028.3—Insurance

1028.307 Insurance under cost-reimbursement contracts.

1028.307–1 Group insurance plans.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1028.1—Bonds

1028.106 Administration.

1028.106–6 Furnishing information.

(b) COs must furnish certified copies and determine reasonable and appropriate costs, after consultation with legal counsel.

Subpart 1028.3—Insurance

1028.307 Insurance under cost-reimbursement contracts.

1028.307–1 Group insurance plans.

Plans must be submitted to the CO, who must obtain the advice of legal counsel.

PART 1033—PROTESTS, DISPUTES, AND APPEALS

Subpart 1033.2—Disputes and Appeals

Sec.
1033.201 Definitions.
1033.210 Contracting officer's authority.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1033.2—Disputes and Appeals

1033.201 Definitions.

Agency Board of Contract Appeals means the General Services Administration Board of Contract Appeals (GSBCA). The GSBCA is the authorized representative of the Secretary of the Treasury in hearing, considering, and determining all appeals of decisions of CO's filed by contractors pursuant to FAR subpart 33.2. Appeals must be governed by the rules of the GSBCA (48 CFR chapter 61, part 6101).

1033.210 Contracting officer's authority.

It is Treasury's policy to encourage the use of Alternate Disputes Resolution (ADR) procedures. A decision to use ADR procedures requires review and approval by legal counsel.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1052.2—Texts of Provisions and Clauses

Sec.
1052.201–70 Contracting Officer's Technical Representative (COTR) Designation and Authority.
1052.219–18 Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation).
1052.219–70 SF 294 and SF 295 Reporting.
1052.219–71 Subcontracting Plan.
1052.219–72 Section 8(a) Direct Awards.
1052.219–73 Department of the Treasury Mentor-Protégé Program.
1052.219–74 [Reserved]
1052.219–75 Mentor Requirements and Evaluation.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1052.2—Texts of Provisions and Clauses

1052.201–70 Contracting Officer's Technical Representative (COTR) Designation and Authority.

Per DTAR 1001.670–3, insert the following clause:

Contracting Officer's Technical Representative (COTR) Designation andAuthority (Mar 2002)

(a) The contracting officer's technical representative is

_____

[insert name, address and telephone number].

(b) Performance of work under this contract is subject to the technical direction of the COTR identified above, or a representative designated in writing. The term ''technical direction'' includes, without limitation, direction to the contractor that directs or redirects the labor effort, shifts the work between work areas or locations, and/or fills in details and otherwise serves to ensure that tasks outlined in the work statement are accomplished satisfactorily.

(c) Technical direction must be within the scope of the contract specification(s)/work statement. The COTR does not have authority to issue technical direction that:

(1) Constitutes a change of assignment or additional work outside the contract specification(s)/work statement;

(2) Constitutes a change as defined in the clause entitled ''Changes'';

(3) In any manner causes an increase or decrease in the contract price, or the time required for contract performance;

(4) Changes any of the terms, conditions, or specification(s)/work statement of the contract;

(5) Interferes with the contractor's right to perform under the terms and conditions of the contract; or,

(6) Directs, supervises or otherwise controls the actions of the contractor's employees.

(d) Technical direction may be oral or in writing. The COTR must confirm oral direction in writing within five workdays, with a copy to the contracting officer.

(e) The contractor must proceed promptly with performance resulting from the technical direction issued by the COTR. In the opinion of the contractor, if any direction of the COTR or the designated representative falls within the limitations of (c) above, the contractor must immediately notify the contracting officer no later than the beginning of the next Government work day.

(f) Failure of the contractor and the contracting officer to agree that technical direction is within the scope of the contract will be subject to the terms of the clause entitled ''Disputes.''

(End of clause)

1052.219–18 Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation).

In accordance with DTAR 1019.811–3(d)(3), substitute the following for the following for paragraph (c) in FAR 52.219–18:

(c) Any award resulting from this solicitation will be made directly by the contracting officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

1052.219–70 SF 294 and SF 295 Reporting.

Per DTAR 1019.708–70(a), insert the following clause:

SF 294 and SF 295 Reporting (Mar 2002)

In accordance with the clause entitled ''Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan'' in section I and the contract schedule, SF 294 and SF 295 reports must be submitted to the following personnel:

Addressee	Submit SF 294	Submit SF 295
Contracting Officer (Address shown on front of contract)	Original	Original.
Small Business Specialist [Insert Bureau name and address]	Copy	Copy.
Department of the Treasury, Office of Small Business Development (MMD), 1500 Pennsylvania Avenue, NW., c/o 1310 G St., NW., Suite 400W, Washington, DC 20220.	N/A	Copy.

(End of clause)

1052.219–71 Subcontracting Plan.

As prescribed in DTAR 1019.708–70(b), insert the following provision:

Subcontracting Plan (Mar 2002)

As part of its initial proposal, each large business offeror must submit a subcontracting plan, as prescribed in FAR 52.219–9. Use of the subcontracting plan outline contained in section J of this solicitation is optional; however, plans must contain all elements included in the outline.

(End of provision)

1052.219–72 Section 8(a) Direct Awards.

As prescribed in DTAR 1019.811–3(f), insert the following clause:

Section 8(a) Direct Awards

(a) This purchase order or contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the Department of the Treasury. SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is: *[To be completed by the contracting officer at the time of award]*

(b) The contracting officer is responsible for administering the purchase order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The contracting officer shall also coordinate with SBA prior to processing any novation agreement. The contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) To notify the contracting officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner(s) upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)21), transfer of ownership or control must result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of control; and

(2) To adhere to the requirements of FAR 52.219–14, Limitations on Subcontracting.

(End of clause)

1052.219–73 Department of the Treasury Mentor-Protégé Program.

As described in DTAR 1019.202–70, insert the following provision:

Department of the Treasury Mentor-protégé Program (Jan 2000)

(a) Large and small businesses are encouraged to participate in the Department of the Treasury Mentor-Protégé Program. Mentor firms provide small business Protégés with developmental assistance to enhance their capabilities and ability to obtain federal contracts.

Mentor firms are large prime contractors or eligible small businesses capable of providing developmental assistance. Protégé firms are small businesses as defined in 13 CFR parts 121, 124, and 126.

Developmental assistance is technical, managerial, financial, and other mutually beneficial assistance to aid protégés. Contractors interested in participating in the Program are encouraged to contact the Department of the Treasury OSBD or the Bureau of the OSBD for further information.

(End of provision)

1052.219–74 [Reserved]

1052.219–75 Mentor Requirements and Evaluation.

As prescribed in DTAR 1019.202–70, insert the following clause:

Mentor Requirements and Evaluation (Jan 2000)

(a) Mentor and protégé firms shall submit an evaluation to the Department of the Treasury's OSBD at the conclusion of the mutually agreed upon Program period, or the voluntary withdrawal by either party from the Program, whichever occurs first. At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and protégé will formally brief the Department of the Treasury Mentor-Protégé Program Manager regarding program accomplishments under their mentor-protégé agreements.

(b)A mentor or protégé must notify the OSBD and the contracting officer, in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the Program. A mentor firm must notify the OSBD and the contracting officer upon receipt of a protégé's notice of withdrawal from the Program.

(End of clause)

[FR Doc. 02–31116 Filed 12–10–02; 8:45 am]

BILLING CODE 4811–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Notice of Availability of the Final Recovery Plan for Gabbro Soil Plants of the Central Sierra Nevada Foothills

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the final Recovery Plan for Gabbro Soil Plants of the Central Sierra Nevada Foothills. This recovery plan covers four plants listed as endangered: Stebbins' morning-glory (*Calystegia stebbinsii*), Pine Hill ceanothus (*Ceanothus roderickii*), Pine Hill flannelbush (*Fremontodendron californicum* ssp. *decumbens*), and El Dorado bedstraw (*Galium californicum* ssp. *sierrae*); one plant listed as threatened, Layne's butterweed (*Senecio layneae*); and one plant species of concern, El Dorado mule-ears (*Wyethia reticulata*).

ADDRESSES: Copies of this recovery plan are available by request from the Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825. Recovery Plans may also be obtained from: Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda,

Maryland 20814, 301/429–6403 or 1–800–582–3421. The fee for the plan varies depending on the number of pages of the plan. This recovery plan will be made available on the World Wide Web at *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm.*

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, Fish and Wildlife Biologist, at the above Sacramento address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973, as amended in 1988 (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. Information presented during the public comment period has been considered in the preparation of this final recovery plan, and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

The six species of plants covered in the final recovery plan are primarily restricted to gabbro soils habitat in the central Sierra Nevada foothills of California. Conversion of habitat to urban uses has extirpated the listed species and species of concern from a significant portion of their historic ranges. The remaining natural communities are highly fragmented, and many are marginal habitats in which these species may not persist during catastrophic events.

Interim goals include stabilizing and protecting populations, conducting research necessary to refine reclassification and recovery criteria, and reclassifying to threatened (*i.e.*, downlisting) Stebbins' morning-glory and Pine Hill ceanothus, species currently federally listed as endangered. The ultimate goals of this recovery plan are: (1) Protect and restore sufficient habitat and numbers of populations; (2) ameliorate both the threats that caused five of the gabbro soil plants to be listed and any other newly identified threats; (3) delist Stebbins' morning-glory, Pine Hill ceanothus, and Layne's butterweed, and downlist Pine Hill flannelbush and El Dorado bedstraw; and (4) ensure the long-term conservation of El Dorado mule-ears.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 02–31175 Filed 12–10–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 238

Wednesday, December 11, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

USDA-Forest Service/Spalding Land Exchange and Special Use Permit Environmental Impact Statement and Lassen National Forest Plan Amendment, Lassen National Forest, Lassen County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Lassen National Forest, is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed land exchange between the Spalding Community Services District and the Lassen National Forest, Lassen County, CA. Approval would include the transfer of approximately 57.21 acres of Federal lands encompassing one 52.50 acre parcel and one 4.71 acre parcel, and also includes a non-significant minor amendment to the ''Lassen National Forest Land and Resource Management Plan'' (LRMP), and authorization of a special use of National Forest System Lands for water and sewer pipeline corridors, and an access road totaling approximately 2.7 acres. The Forest Service invites written comments and suggestions on the scope of the environmental analysis for the EIS from Federal, State, and local agencies, federally recognized Tribes, and other individuals or organizations that may be interested in or affected by the proposed action.

DATES: Submit comments on or before January 27, 2003.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March 3, 2003. The final EIS is scheduled for completion in August 2003.

ADDRESSES: You may request to be placed on the project mailing list or you may direct questions, comments and suggestions to the Responsible Official: Edward C. Cole, Forest Supervisor, Lassen National Forest, 2550 Riverside Drive, Susanville, CA 96130.

FOR FURTHER INFORMATION CONTACT: Lois Charlton, Forest Lands Officer, Lassen National Forest 2550 Riverside Drive, Susanville, CA 96130. Telephone (530) 257–2151.

SUPPLEMENTARY INFORMATION: The Forest Service (lead agency) is proposing a value for value exchange of federal land with the Spalding Community Services District (SCSD) for third party private lands. If the values are unequal, either party may equalize the values by making a cash payment not the exceed 25 percent of the value of the lands transferred out of Federal ownership. The Forest Service is initiating this action in response to a request by SCSD to acquire lands to accommodate construction and operation of a wastewater collection and treatment facility. The federal lands are from the Lassen National Forest (57.21 acres). The Lands that the SCSD would potentially exchange include up to four parcels listed in order of priority for acquisition (Lassen County Assessor Parcel Numbers 077–303–21, 075–120–14, 075–120–15, 075–130–11 and 077–303–21). Acquisition of these parcels would improve access to National Forest System Lands, eliminate one or more in-holdings, and add wetland habitat to the Lassen National Forest. Approval of the land exchange would also include a non-significant minor amendment to the Lassen LRMP, and authorization of a special use of National Forest System Lands for water and sewer pipeline corridors and an access road totaling approximately 2.7 acres.

Environmental Analysis of alternative locations and designs for the facility was conducted in the ''Spalding Community Services District Wastewater Collection and Treatment Facilities Final Environmental Impact Report'' (SCSD FEIR) dated April 17, 2000. The SCSD FEIR will be incorporated by reference into the EIS for the land transfer. Lands acquired in the exchange by the Forest Service will be managed in accordance with the Lassen National Forest LRMP (1993).

The Spalding Community Services District conducted extensive public participation in development of the SCSD EIR (ref. SCSD FEIR pages 1–2, 1–3, 1–8, 1–9). Comments received in response to the Draft SCSD EIR (SCSD FEIR page 1–4—1–8) were responded to in the Final EIR and will not be identified in the EIS as new issues. The Lassen National Forest listed the land exchange in the quarterly Schedule of Proposed Actions (SOPA) starting in March of 1999. An initial proposed actions was presented to the Lassen County Board of Supervisors at two regularly scheduled meetings (2/13/01 and 2/20/01). The project was presented at a regularly scheduled meeting of the Lassen County Fish and Game Commission (2/15/01). A direct mailing regarding this proposed action was sent to a list of persons and organizations involved in the SCSD EIR, involved government agencies, or those who had requested notification of projects on the Eagle Lake Ranger District involving recreation, special uses, roads, or other proposed actions. Based on analysis completed to date, it was determined that an EIS is needed. Information and data previously gathered will be carried forward in this EIS. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, all Spalding community landowners and to organizations and citizens who express interest in this proposal.

Preliminary issues identified with this proposal include concerns over proposed mitigation measures designed to protect the Federally Threatened bald eagle. These issues include decreased access for sportsman caused by closure of one non-system road (Fred's Road) and a seasonal road closure of a portion of the Osprey Management Area boundary road (32N27Y), and a potential increase of use on the existing network of nonsystem roads between the Spalding Tract and the Pine Creek Estuary.

At this time the alternatives under consideration include: no action and exchanging lands as identified in the proposed action. The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and NFS lands will be considered. The EIS will

disclose the analysis of site-specific mitigation.

Public participation is important. Comments from the public will continue to be used to:

—Identify, confirm or redefine potential issues.
—Identify, confirm or redefine major issues to be analyzed in depth.
—Eliminate minor issues or those, which have been covered by a previous environmental analysis, such as the Lassen National Forest LRMP, and the SCSD FEIR.
—Identify alternatives to the proposed action.
—Identify, confirm or redefine potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects).
—Determine potential cooperating agencies and task assignments.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties.

The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the Federal Register. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes, and members of the public for their review and comment. It is important that those interested in the management of the Lassen National Forest participate at that time.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 US. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986*) and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980*). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequency of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: December 2, 2002.

Edward C. Cole,

Forest Supervisor, Lassen National Forest.

[FR Doc. 02–31194 Filed 12–10–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on January 14, 2003, at the North Tahoe Conference Center, 8318 North Lake Blvd, Kings Beach, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held January 14, 2003, beginning at 9 a.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 8318 North Lake Blvd., Kings Beach, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: Proposed revision to the Committee's mission, proposed meeting with the Secretary of Agriculture, status report of USFS FY 2002 fire suppression deferrals, Lands Subcommittee update, update of the USFS forest fuels action plan, status report on the TRPA EIP update, status report on Pathway 2007, USACE update on Tahoe programs and projects, NRCS WHIP program, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues maybe brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: December 2, 2002.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 02–31171 Filed 12–10–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 01–BXA–21]

Action Affecting Export Privileges; Alexander Zisman

In the Matter of: Alexander Zisman, 2 Flotskaya, #81, Moscow, Russia, 125565, Respondent.

Order

The Bureau of Industry and Security, United States Department of Commerce (''BIS''), having initiated an administrative proceeding against Alexander Zisman, 2 Flotskaya, #81, Moscow, Russia, 125565 (''Zisman''), pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. Sections 2401–2420 (2000)) (''ACT''),[1] and the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2002)) (''Regulations''),[2] based on allegations that Zisman violated sections 764.2(b) and 764.2(e) of the Regulations; specifically, that Zisman arranged for the transportation of computers from Germany to the Netherlands, and from the Netherlands to the Russian Federal Nuclear Center, Russian Research Institute of Experimental Physics (Arzamas–16), Russia, without obtaining the necessary license for the shipment and that Zisman knew or had reason to know that no such license was obtained; and

BIS and Zisman having entered into a Settlement Agreement pursuant to section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me; *It is therefore ordered:*

First, that a civil penalty of $20,000 is assessed against Zisman, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Zisman shall be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that for a period of five years from the date of this Order, Zisman, his successors or assigns, and when acting for or on behalf of Zisman, his officers, representatives, agents or employees (''denied person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying or negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that after notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Zisman by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 Gay Street, Baltimore, Maryland 21202–4022, notifying that office that this case is withdrawn from adjudication, as provided by section 766.18 of the Regulations.

Eighth, that the charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 4th day of December, 2002.

Lisa A. Prager,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 02–31169 Filed 12–10–02; 8:45 am]

BILLING CODE 3510–DT–M

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 FR 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

[2] The Regulations governing the violations at issue are found in the 1996 and 1997 versions of the Code of Federal Regulations, (15 CFR Parts 768–799 (1996), as amended (61 FR 12714, March 25, 1996) (hereinafter ''the former Regulations'')), and 15 CFR parts 768–799 (1997)). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 CFR parts 768A–799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 **Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR parts 730–774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BIS alleges occurred. The Regulations establish the procedures that apply to this matter.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.021202295–2295–01]

Global Ocean Data Assimilation Experiment (GODAE)

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Oceanic and Atmospheric Administration (NOAA), on behalf of the National Oceanographic Partnership Program (NOPP), is entertaining preliminary proposals (Letters of Intent) and subsequently full proposals for implementing the initial, pre-operational U.S. contribution(s) to the Global Ocean Data Assimilation Experiment. These efforts are a Pilot Project under Ocean.US, the National Office for Integrated and Sustained Ocean Observations, intended to lead to sustained operational efforts supported by U.S. agencies such as NOAA and the U.S. Navy. The NOPP was established by 10 U.S.C. 7902 *et seq.* to (1) promote the national goals of assuring national security, advancing economic development, protecting quality of life, and strengthening science education and communication through improved knowledge of the ocean; and (2) coordinate and strengthen oceanographic efforts in support of those goals by identifying and carrying out partnerships among Federal agencies, academia, industry, and other members of the oceanographic scientific community in the areas of data, resources, education, and communication. In FY 2003, NOPP intends to begin a program to demonstrate the value of near-real-time, ocean data assimilation. Contingent on the availability of appropriated funds, this program is expected to continue for three to five years. The level of funding available each year will be dependent on appropriations. It is expected that approximately $1,500,000 will be available for the first year of the project, approximately $2,500,000 for the second year, and up to $4,500,000 for the third year. It is expected that the level of funding for the third year will continue for two additional years, depending on progress. Proposals should be written as three-year efforts with options to continue in years four and five should progress be satisfactory.

DATES: January 10, 2003, 5 pm (EST)—Letter of Intent in electronic, facsimile, or hard copy form due. Letters of Intent are used for assessment purposes only and are not a requirement for proposal submission.

February 24, 2003, 5 pm (EST)—Full proposal in electronic or hard copy form due. The proposal must clearly delineate each partner's efforts and the associated request(s) for NOPP funds as well as any cost-sharing that may be offered. (Cost- or resource-sharing is not required in any response to this announcement.) The same proposal will implement funding of all partners in the proposed effort, if selected, thus, separate budgets within the single proposal will be required if more than one funding action is needed.

Unsuccessful applications will be destroyed.

June 1, 2003 (approximate)—Funds awarded to selected recipients. Program begins.

ADDRESSES: Because of potential delays and/or damage in mailing or shipment of hard copy submissions, electronic submissions of Letters of Intent (LOI) and Proposals are strongly encouraged. Electronic submissions must be in PDF format. Electronic submissions in other than PDF format will not be accepted. Electronic submissions must be directed to the National Oceanographic Partnership Program at *http://www.onr.navy.mil/sci_tech/ocean/GODAE_NOAA.htm*; ATTN: Stephen R. Piotrowicz. Letters of Intent submitted by facsimile must be directed to Ocean.US, ATTN: Stephen R. Piotrowicz at 703–588–0872. Letters of Intent and Proposals submitted in hard copy form must be submitted to: Ocean.US, 2300 Clarendon Blvd., Suite 1350, Arlington, VA 22201; ATTN: Dr. Stephen R. Piotrowicz. Proposals submitted in hard copy form should contain one original plus two copies of the full proposal. If color and/or grayscale graphics are included in the proposal, and offerer feels that color or grayscale graphics would be necessary for the review process, the offerer may submit twelve additional copies of the graphics.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen R. Piotrowicz, telephone: (703) 588–0850; facsimile: (703) 588–0872; internet: *Steve.Piotrowicz@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 49 U.S.C. 44720 (b); 33 U.S.C. 883d; 15 U.S.C. 2904; 15 U.S.C. 2934, (CFDA No. 11.431)—Climate and Atmospheric Research.

II. Program Description

Background

The Global Ocean Data Assimilation Experiment (GODAE) is a one-time pilot project to demonstrate the feasibility and practicality of near real-time global ocean data assimilation and numerical modeling for: (a) Short range open ocean forecasts; (b) boundary conditions to extend predictability of coastal regimes; (c) initialize climate forecast models; and (d) research during the period 2003 to 2007. GODAE has been in planning for at least five years. Within the international community this has culminated in the preparation of both a Strategic Plan and an Implementation Plan (*http://www.bom.gov.au.GODAE/IP/Plan.htm*). NOPP has provided substantial funding for a number of U.S. GODAE-preparatory and GODAE-related activities, which have established a foundation upon which we now wish to build as GODAE moves into its demonstration phase as a Pilot Project under Ocean.US. Elements of the international community are in the process of organizing GODAE. Demonstrating the utility of near-real-time data assimilation in an operational setting would provide critical feedback needed to justify the continuance of basin-scale ocean observing and prediction/estimation systems over the long term.

SUPPLEMENTARY INFORMATION: Items (a) or (b) or (c) above must be the primary focus of this effort.

Funding Availability

Actual funding levels will depend upon the final budget appropriations. This Program Announcement is for a program to be conducted over a three (nominal) to five (with options) year period, by investigators both inside and outside the Federal Government. It is expected, though not certain, that two or more programs involving multiple investigators will be funded, with possible coalescence or down-selection for the Option years 4 and 5. In accordance with the NOPP, team efforts among academia, industry, and government participants are very strongly encouraged; the degree of inter-sector teaming is a selection criteria. For Federal Government investigators, funding will be provided through intra- or interagency transfers, as appropriate. The funding instrument for extramural awards will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project, in which case the funding instrument could be a cooperative agreement. Examples of substantial NOAA involvement may

include, but are not limited to, proposals for collaboration between NOAA or NOAA scientists and a recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. NOAA will make decisions regarding the use of a cooperative agreement on a case-by-case basis.

III. Eligibility

Extramural eligibility is not limited. Eligible applicants include institutions of higher education, other non-profits, commercial organizations, international organizations, state, local and Indian tribal governments. Applications from non-Federal and Federal applicants will be competed against each other.

Please Note: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. The only exception to this is governmental research facilities for awards issued under the authority of 49 U.S.C. 44720. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

IV. Evaluation Criteria

Evaluations of the proposals will use the following selection criteria:

1. Relevance of the proposed program to NOPP objectives, including (30%):

a. Support of critical research objectives or operational goals that meet NOPP and participating federal agency requirements,

b. Broad participation within the oceanographic community,

c. Partners with a long-term commitment to the proposed objectives,

d. Resources are shared among partners, and

e. Active involvement of one or more operational centers.

2. Overall technical merits of the proposal (30%), including:

a. Demonstration of the utility of near-real-time data assimilation in operational settings;

b. Coordination and/or collaboration with existing operationally oriented efforts;

c. Feedback mechanisms between assimilation efforts and data set providers;

d. Collaborative activities with international efforts providing mutual benefits to both.

3. The offeror's capabilities, related experience, and facilities or unique combinations of these that are critical to the program's objectives (10%).

4. The qualifications and experience of the proposed principal investigator(s) and key personnel (10%).

5. The degree of significant partnering among at least two of the following parties, academia, industry or government (10%).

6. Realism and duration of the proposed costs (10%).

The proposed program shall produce substantive results in no more than three years to allow review and decisions on any proposed options for extension to years four and five. Non-productive programs will be considered for termination at the end of three years, regardless of any options.

V. Selection Procedures

The review process will be conducted by the NOPP Program Office on behalf of the NOPP agencies. A description of the NOPP Proposal Review Process can be found at: *http://www.nopp.org/Dev2Go.web?id=236688&rnd=31591.* All proposals, including those submitted by NOAA employees, will be evaluated similarly. The process uses peer reviews solicited by mail and/or a panel. Federal conflict of interest rules are followed. The individuals who provide peer review are scientists drawn from academic, government, and industrial/commercial communities. Mail reviews require a scoring in accordance with the criteria presented in Section IV, Evaluation Criteria, as well as a narrative assessment. If a panel is convened along with soliciting mail reviews, it will take the results of the mail reviews and rate the proposals into three Tiers (1—Strong Proposal, fundable with no significant issues; 2—Strong Proposal, fundable with issues to be resolved; 3—Not Recommended). The ratings will be determined by a vote of the Panel on each proposal individually with the Tier assigned according to the highest number of votes received.

In the event of a tie between two or three tiers, the proposal will be assigned to the highest rated Tier of the Tiers that tied for the highest number of votes. If only a panel is convened, it will both score the proposals numerically in accordance with the criteria in Section IV and rate the proposals into tiers. No consensus advice will be given by the Panel (unless the panel is composed entirely of Federal employees.) The recommendations and evaluations of the panel will be considered by the NOPP Interagency Working Group along with the following program policy factors:

a. Availability of funding;

b. Duplication of on-going Federal support;

c. Duplication with other applications in the solicitation;

d. Geographic diversity;

e. Diversity among the types of institutions receiving awards;

f. Collaboration among multiple jurisdictions; and

g. Subject area diversity within the competition.

The recommendations of the participating funding agencies will be forwarded to the National Ocean Research Leadership Council for final selection(s) based on the program policy factors given above. Any proposal within Tier One or Tier Two may be selected for award. The Program Manager(s) in the agencies will also recommend the total duration of funding and the amount of funding for each partner in the proposal. Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

VI. Instruction for Application

What To Submit

Letter of Intent (LOI)

To prevent the expenditure of effort that may not be successful, it is in the best interest of applicants to submit letters of intent, however, it is not a requirement. Letters of Intent (LOI) must be sent by electronic mail. The following information should be included:

(1) The LOI should clearly identify the program area being addressed by starting the project title with ''U.S. GODAE:'' Principal Investigators and collaborators should be identified by affiliation and contact information. The total amount of Federal funds being requested should be listed for each budget year for each collaborator's institution.

(2) A concise (2-page limit) description of the program including a brief summary of the work to be completed, methodology to be used, approximate costs of the major elements (salaries and benefits, direct costs, and travel). Evaluation will be by NOPP agency program management. Projects deemed suitable during Letters of Intent (LOI) review will be encouraged within 15 days to submit full proposals; projects may also be discouraged from submitting full proposals, but investigators may still do so if they wish.

(3) Resumes (1-page limit each) of the Principal Investigators.

Full Proposal Guidelines

Each full proposal must include the first seven items listed below; the standard forms included as Item 8 will only be required for proposal(s) selected for funding. All pages should be single-

or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8½'' x 11'' paper. Brevity will assist reviewers and program staff in dealing effectively with proposals, therefore, the Program Description may not exceed 15 pages. Tables and visual materials, including figures, charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations and letters of support, if any, are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices, other than support letters, if any, are permitted. Failure to adhere to the above limitations will result in the proposal being rejected without review.

(1) *Signed Title Page:* The title page should be signed by the Principal Investigator(s) and the institutional representative and should clearly identify program by starting the title ''U.S. GODAE:'' The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each year of the program; the total should include all collaborator's budgets on projects involving multiple institutions, even if one of the collaborators is a Federal institution.

(2) *Abstract:* An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigator(s), total proposed cost and budget period.

(3) *Program Description/Work Statement (15-page limit):* The Program Description should include identification of the problem, objectives of the work, relevance to the operational prediction mission, proposed implementation strategy, and proposed methodology. The following elements should be described in detail:

(a) *Approach:* The Project should demonstrate the implications of real-time ocean data assimilation into operational analysis and forecast models, or into analysis and forecast systems that are running in an operational mode. It should facilitate the process of acceptance of such assimilation by one or more operational entities, entraining the operational entity(ies) working on a 24/7 basis. Approaches that propose work independent of operational activities, such that a ''hand-off'' is proposed at the end of the project will not be deemed responsive to this call.

(b) *Data Management:* It should illustrate how real-time (within 24 hour) delivery of products will be achieved, although longer-delivery times (with, for example, more quality control) may be acceptable in addition but not instead, for some products.

(4) *Budget and Budget Justification:* There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Subcontracts should have a separate budget page. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested.

(5) *Current and Pending Support*: Information on the number of person-months per year devoted to this project and ongoing projects regardless source of support (Federal, State, or local government agencies, private foundations, industrial or other commercial organizations) by the Principal Investigator and other senior personnel must be listed. Similar information must be provided for all proposals already submitted or submitted concurrently to other possible sponsors, including those within NOAA.

(6) *Vitae (2 pages maximum per investigator):* Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(7) *Results from prior research:* The results of related projects supported by NOAA and other agencies should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency, award number, Principal Investigators, and total award. The section should be a brief summary and should not exceed two pages total.

(8) *Standard Application Forms:* For proposal(s) selected for funding, the following forms must also be submitted: Standard Forms 424, Application for Federal Assistance, and 424B, Assurances-Non-Construction Programs, (Rev 4–88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. For Section 10, for proposals selected for funding by NOAA, applicants should enter ''11.431''' for the CFDA Number and ''Climate and Atmospheric Research'' for the title. The form must contain the original signature(s) of an authorized representative of the applying institution(s).

(DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HIS), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at the following Internet Web site: *http://www.ed.gov/offices/OCR/99minin.html*.

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

Applications under this program are not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.

This notice has been determined to be not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in EO 13132.

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. Because notice and comment are not required, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

This documents contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424B have been approved by OMB under the respective control numbers 0348–0043 and 0348–0040.

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.

Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–31195 Filed 12–10–02; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Initial Patent Applications

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 10, 2003.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at (703) 308–7400; or by electronic mail at *susan.brown@uspto.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert J. Spar, Director, Office of Patent Legal Administration, USPTO, Washington, DC 20231; by telephone at (703) 308–5107; or by electronic mail at *bob.spar@uspto.gov*.

SUPPLEMENTARY INFORMATION

I. Abstract

Article 1, Section 8, Clause 8 of the Constitution provides that Congress shall have the power . . .'' [t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.'' Congress has exercised this grant of power under the Constitution to enact the patent statute, Title 35, U.S.C., and to establish the United States Patent and Trademark Office (USPTO).

The USPTO is required by 35 U.S.C. 131 to examine applications for patents. An applicant must provide sufficient information to allow the USPTO to properly examine the application to determine whether it meets the criteria set forth in the patent statute and regulations to be issued as a patent. The USPTO administers the statute through various rules in 37 CFR 1.16 through 1.84. The patent statute and regulations require that an application for patent (or application package) include the following collections of information:

(1) A specification containing a description of the invention and at least one claim defining the property right sought by the applicant;

(2) a drawing or photograph, where necessary, for an understanding of the invention;

(3) an oath or declaration signed by the applicant; and

(4) a filing fee.

The ''American Inventors Protection Act of 1999'' brought some changes to the patent application process. This act amended 35 U.S.C. 122 to provide for the publication of patent applications after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under Title 35, United States Code. It also amended 35 U.S.C. 119 and 120 to permit applicants to petition the USPTO to accept a delayed priority claim. As a result of this act, the USPTO amended 35 U.S.C. 132 to allow applicants to request (for a fee) the continued examination of an application as an alternative to submitting a continued prosecution application. With the establishment of the request for continued examination practice, the USPTO is eliminating the continued prosecution application practice for all of the applications, with the exception of the design patent applications.

This information collection contains both paper and electronic forms. New utility and provisional applications may be submitted electronically through the Electronic Filing System (EFS). The specification for these applications is created through the authoring tools that can be downloaded free of charge from the USPTO website. Through the Electronic Packaging and Validation Engine (ePAVE) (which applicants can also download from the USPTO Web site), applicants can create the Application Transmittal, the Fee Transmittal, and the Application Data Sheet that are submitted, in addition to the specification, as part of the electronic patent application package. The claims, drawings, oaths, declarations, powers of attorney, and small entity statements are scanned or converted into images and attached to the electronic patent application package. Once the specification and claims are completed, the necessary forms created, and the images attached to the application, the ePAVE software will then bundle, compress, and encrypt the files for submission to the USPTO. The EFS sends the applicant an acknowledgment receipt after the application package has been received, decrypted, and decompressed. The EFS uses public key infrastructure (PKI) technology for secure electronic communications so authorized filers must obtain a customer number and a digital certificate.

The Application Data Sheet can be submitted in paper, in addition to electronic transmission. However, it must be noted that this is a format and not an official paper form. As such, neither the paper nor the electronic versions have form numbers. The Application Data Sheet is only used in the new utility, plant, and design applications.

II. Method of Collection

By mail, facsimile (limited to petitions to accept delayed priority claims and requests for continued prosecution applications), or hand delivery to the USPTO. New utility and provisional applications can also be submitted electronically through the EFS.

III. Data

OMB Number: 0651–0032.

Form Number(s): PTO/SB/01/01A/02A/02B/03/03A/04/05/06/07/13/PCT/16/17/18/19/29/29A/101 through 110.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; and the Federal Government.

Estimated Number of Respondents: 452,487 responses per year.

Estimated Time Per Response: The USPTO estimates that it takes the public approximately 17 minutes to 10 hours and 45 minutes (0.28 hours to 10.75 hours) to complete this information, depending on the request. This includes time to gather the necessary information, prepare the application, petition, or CD submission, and submit the completed request to the USPTO. The USPTO believes that it takes the same amount of time to gather the necessary information, prepare the new utility or provisional application, and submit it to the USPTO, whether the applicant submits it electronically or in paper form. There are 26 forms in this collection.

Estimated Total Annual Respondent Burden Hours: 4,169,768 hours per year.

Estimated Total Annual Respondent Cost Burden: $1,050,781,314 per year. The USPTO expects that all of the information in this collection, with the exception of the CD submissions of oversized new utility and provisional applications that cannot be submitted electronically through EFS, will be prepared by an attorney. The USPTO expects that the oversized CD submissions will be prepared by paraprofessionals. Using the professional hourly rate of $252 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting all of the information in this collection, with the exception of the oversized CD submissions, will be $1,050,781,284 per year. Using the paraprofessional hourly rate of $30 per hour, the USPTO estimates that the respondent cost burden for submitting the oversized CD submissions will be $30 per year. The total respondent cost burden is $1,050,781,314 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Original New Utility/Plant/Design Applications and Continuation/Divisional of an International Application—No Application Data Sheet.	10 hours and 45 minutes	275,506	2,961,690
Electronic Original New Utility/Plant/Design Applications—No Application Data Sheet.	10 hours and 45 minutes	3,148	33,841
Original New Utility/Plant/Design Applications—Application Data Sheet	10 hours and 36 minutes	30,612	324,487
Electronic Original New Utility/Plant/Design Applications—Application Data Sheet.	10 hours and 36 minutes	350	3,710
Continuation/Divisional Applications—Utility/Plant/Design	54 minutes	34,707	31,236
Continued Prosecution Applications—Design	24 minutes	263	105
Continuation-in-Part Applications—Utility/Plant/Design	5 hours and 15 minutes	17,364	91,161
Provisional Applications	8 hours	89,789	718,312
Electronic Provisional Applications	8 hours	640	5,120
Petition to Accept Delayed Priority Claim	1 hour	105	105
CD Submissions of Oversized New Utility and Provisional Applications That Cannot be Submitted Electronically via EFS:. *Application Transmittal Form. *Cover Letter.	17 minutes	3	1
Total		452,487	4,169,768

Estimated Total Annual Non-hour Respondent Cost Burden: $262,216,319 per year. There are capital start-up, recordkeeping, and postage costs, as well as filing fees, associated with this information collection. These costs are not applicable to all of the information in this collection, however.

Applicants can submit new utility and provisional applications electronically through the EFS. These applications require attachments that must be in a TIFF format in order to be submitted electronically. If these documents are not in this format, applicants may need a scanner in order to convert their images and documentation into the TIFF format. The USPTO estimates that the average cost of a scanner is $200.

Applicants can use Compact Disk-Read Only Memory (CD–ROM) or Compact Disk-Recordables (CD–R) to submit patent applications containing large computer program listings to the USPTO. New utility or provisional applications that exceed 10 megabytes cannot be submitted electronically through EFS, so applicants have the option to copy these applications onto CD–ROMs or CD–Rs as well. To make these CD–ROM/CD–R copies, applicants must have a CD drive capable of recording onto CD–R media (a ''CD burner''), CD recording software, blank CD–R media (CDs), cases and labels for the CDs, and a padded mailing envelope for shipping. The average cost of a CD burner is approximately $200, depending on the speed and type of PC connection. Commercial software for creating CDs, such as Easy CD Creator 5.0, retails for approximately $100, although basic CD recording software is typically included with the CD burner. Blank CD–R media with plastic jewel cases can be purchased for approximately $10 for 10 blank CDs, or about $1 per disc. The average cost of software for labeling CDs, including blank labels and case inserts, is approximately $20. Padded 8.5 x 11-inch mailing envelopes for safely shipping the CDs cost approximately $12 for a package of 12, or about $1 per envelope. In sum, the USPTO estimates the additional costs for the hardware, software, and supplies necessary for CD submissions to be approximately $342 per year. The total capital start-up costs for this collection are $542 per year.

The applications, the petition to accept a delayed priority claim, and the oversized CD submissions may be submitted by mail through the United States Postal Service. The USPTO recommends that applicants file initial patent applications (which also include the continued prosecution, continuation and divisional, continuation-in-part, and provisional applications) by Express Mail to establish the filing date (otherwise the filing date of the application will be the date that it is received at the USPTO). The USPTO estimates that the average cost for sending an initial application by Express Mail will be $17.85, and that customers filing documents associated with these initial applications may choose this option to mail their submissions to the USPTO. Therefore, the USPTO estimates that up to 448,241 submissions per year may be mailed to the USPTO at an average Express Mail rate of $17.85, for a total postage cost of $8,001,102. If the applicant sends the petition for delayed priority claim by first-class mail, the applicant may also include a signed certification of the date of mailing in order to receive credit for timely filing. The USPTO estimates that the average first-class postage cost for a mailed submission will be 49 cents, and that customers filing the petitions for priority claim may choose to mail their submissions to the USPTO. Therefore, the USPTO estimates that up to 105 submissions per year may be mailed to the USPTO at an average first-class postage cost of 49 cents, for a total postage cost of $51 per year. In the case of the oversized CD submissions, the USPTO estimates that the average postage cost for these submissions will be 95 cents, to cover the costs of mailing the CD, the application transmittal form,

and the cover letter. The USPTO estimates that 3 oversized CD submissions will be received per year, for a total postage cost of $3 per year. The total postage cost for this collection is $8,001,156 per year.

There are recordkeeping costs associated with the oversized CD submissions and the electronic filing of new utility and provisional applications. The USPTO advises applicants who submit oversized new utility and provisional application requests on CD to retain a back-up copy of the CD and a printed copy of the application transmittal form for their records. The USPTO estimates that it will take an additional 5 minutes for the applicant to produce this back-up CD copy and 2 minutes to print the copy of the application transmittal form, for a total of 7 minutes (0.12 hours) for each oversized submission. The USPTO estimates that approximately 3 electronic submissions per year will be oversized, for a total of 0.36 hours per year for retaining the back-up CD and printed application transmittal form. The USPTO believes that these back-up copies will be prepared by paraprofessionals with an estimated hourly rate of $30 per hour, for a total recordkeeping cost of $11 per year.

In addition, the USPTO also strongly advises applicants who file their new utility and provisional applications electronically to retain a copy of the file submitted to the USPTO as evidence of authenticity, in addition to keeping the acknowledgment receipt as clear evidence that on the date noted the file was received by the USPTO. The USPTO estimates that it will take 5 seconds (0.001 hours) to print and retain a copy of the new utility and provisional submissions and that approximately 4,138 (3,498 new utility and 640 provisional applications) submissions per year will use this option, for a total of 4 hours per year. Using the paraprofessional rate of $30 per hour, the USPTO estimates that the recordkeeping cost for retaining this copy will be $120 per year. The total recordkeeping cost for this collection is $131 per year.

There is also annual nonhour cost burden in the way of filing fees associated with this collection. The basic filing fees for the utility, plant, design, and provisional applications are determined by which filing status (other than small entity or small entity) the applicant has selected. The filing fees for the electronically-filed new utility and provisional applications are the same as those for the paper applications. The small entity status does not apply to the petition to accept a delayed priority claim. There are no filing fees associated with the oversized CD submissions.

The total estimated filing costs for this collection of $254,214,490 are calculated in the accompanying chart.

Item	Responses (yr) (a)	Filing fees (b)	Total annual cost (yr) (a) × (b)
Utility Application (including Reissues and all Continuing Applications)—Other Entity	273,137	$740.00	$202,121,380.00
Utility Applications (including Reissues and all Continuing Applications)—Small Entity	68,285	370.00	25,265,450.00
Plant Applications (including Reissues and all Continuing Applications)—Other Entity	768	740.00	568,320.00
Plant Applications (including Reissues and Continuing Applications)—Small Entity	192	370.00	71,040
Design Applications (including Reissues and all Continuing Applications)—Other Entity	15,654	740.00	11,583,960.00
Design Applications (including Reissues and all Continuing Applications)—Small Entity	3,914	370.00	1,448,180.00
Provisional Applications—Other Entity	72,343	160.00	11,574,880.00
Provisional Applications—Small Entity	18,086	80.00	1,446,880.00
Petition To Accept Delayed Priority Claim	105	1,280.00	134,400.00
CD–ROM Submissions of Oversized New Utility and Provisional Applications That Cannot Be Submitted Electronically via EFS: • Application Transmittal Form. • Cover Letter.	3	N/A	0.00
Totals	452,487	.....	254,214,490.00

The USPTO estimates that the total non-hour respondent cost burden for this collection, in the form of capital start-up, operation, recordkeeping, and postage costs, and filing fees, is $262,216,319 per year.

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, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 4, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 02–31193 Filed 12–10–02; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textiles and Textile Products Produced or Manufactured in Romania

December 6, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 11, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the

quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63033, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 11, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
410	111,448 square meters.
435	19,123 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–31206 Filed 12–10–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Removal of Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

December 5, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Effective on January 1, 2003, an export visa will not be required for products in merged Categories 352/652, produced or manufactured in Turkey and exported from Turkey on and after January 1, 2003. The visa requirement is being removed because the quota on this category expires on December 31, 2002, and the existing visa arrangement between the Governments of the United States and Turkey only requires export visas for quota categories.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63037, published on December 4, 2001 and 52 FR 6859, published on March 5, 1987.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive does not cancel, the directive issued to you on March 2, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns export visa requirements for certain cotton and man-made fiber textile products, produced or manufactured in Turkey for which the Government of Turkey has not issued an appropriate export visa.

Effective on January 1, 2003, you are directed to no longer require a visa for products in merged Categories 352/652 exported on and after January 1, 2003 because the quota on this category expires on December 31, 2002, and the existing visa arrangement between the Governments of the United States and Turkey only requires export visas for quota categories.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–31207 Filed 12–10–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 10, 2003.

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 Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type

of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 6, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Scholarship Contract & Teaching Verification Form for Title II HEA Scholarship Recipients.

Frequency: On Occasion; Semi-Annually; Annually.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 5,450. *Burden Hours:* 5,408.

Abstract: Students receiving scholarships under section 204(3) of the Higher Education Act (HEA) incur a service obligation to teach in a high-need school in a high-need LEA. This information collection consists of: (1) A contract to be executed when funds are first awarded; (2) an addendum to the contract to be signed when subsequent funds are awarded; (3) a teaching verification form to be used by students to document their compliance with the contract's conditions.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31200 Filed 12–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41718 entitled ''Large Scale Mercury Control Field Testing Program''. The DOE/NETL is seeking applications to conduct long-term (minimum of two-to-four months at optimum process conditions) field testing of advanced mercury control technologies to (1) verify technology performance in terms of total (50–80%+ based on coal type, equipment, etc.) and speciated mercury removal relative to changes in load and coal-mercury concentration for all coal types (including blends) but emphasizing high-elemental, low rank coals, (2) determine realistic process/equipment costs for various levels of mercury removed for a variety of equipment configurations focusing on smaller surface collection area (SCA) electrostatic precipitators (SCA <300 ft^2/thousand actual cubic feet of flue-gas) for bituminous coals, (3) determine mercury removal levels for blends of different rank coals including subbituminous/high-sulfur bituminous; (4) quantify balance-of-plant (BOP) impacts such as Electro-Static Precipitator (ESP) performance, baghouse performance and bag life, byproduct contamination, corrosion, parasitic load, etc.; and (5) measure and assess potential multiple pollutant or co-control associated with mercury control technology.

In addition, several semi-continuous emission monitors (S–CEMS) would be used to monitor variations in mercury content of flue gas and track technology performance while collecting high quality inlet/outlet mercury speciation data with Ontario Hydro measurements at the beginning, middle and end of each test campaign (plus additional measurements as needed to verify S–CEM results). Tests of by-products may be limited to characterization tests (foaming index, etc.) but collection of enough samples would be obtained for other programs to conduct more detailed or extensive tests, and measurement of mercury in all streams (including water) to seek closure on mercury balances.

DATES: The solicitation will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Martin J. Byrnes, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236, E-mail Address: *byrnes@netl.doe.gov,* Telephone Number: 412–386–4486.

SUPPLEMENTARY INFORMATION: NETL held two workshops (in June and September 2002) with key stakeholders from the utility industry, government agencies, research organizations, and academia to obtain input on the content and structure of future mercury research and development. A summary of the workshop proceedings can be found at *http://www.netl.doe.gov/coalpower/environment.* The workshop participants identified a number of different configurations and technologies that need further long-term testing.

In response, DOE–NETL is issuing a solicitation focused on four major areas that are expected to be important in developing mercury control strategies for the coal-fired electric utility industry and help ensure the continued availability of low-cost electricity from coal while meeting growing air quality demands. Details concerning the solicitation are described below (with allowable scale of testing described in Table 1). Topic Area 1 would focus on sorbent injection technology, Topic Area 2 would cover technologies aimed at wet flue-gas desulfurization enhancement, Topic Area 3 would seek proposals offering oxidation systems and Topic Area 4 would allow for any technologies ready for long-term field-testing. The solicitation supports the overall goal of the Department of Energy/Office of Fossil Energy's Innovations for Existing Plants (IEP) Program to develop advanced technology and knowledge products that enhance the environmental performance of the existing fleet of coal-

fired power plants. The four Areas of Interest for this solicitation are:

Topic 1: Field Testing of Activated Carbon/Sorbents Upstream/Downstream of Existing Utility Particulate Control Devices for Bituminous and Low Rank Coals (Powder River Basin and Lignite).

Topic 2: Field Testing of Effective Mercury Control Technologies Upstream of and Across Wet Flue Gas Desulfurization Systems.

Topic 3: Field Testing of Non-Sorbent Based Concepts for Increasing the Oxidation of Elemental Mercury for Removal in Downstream Air Pollution Control Equipment.

Topic 4: Other Mercury Control Technologies Ready for Long-Term Field-Testing.

TABLE 1.—TOPIC AREA MATRIX

Topic area No.	Topic area	Coal type/existing equipment configuration	Scale of testing
1	Sorbent Injection	Bituminous—SCA <300 CSESP/HSESP Lignite/Sub-bituminous—ESP/FF (or COHPAC) (no SCA limit) Coal Blends—no SCA limit).	1.
2	FGD Enhancement	All coals types or blends with wet FGD.	1.
3	Oxidation Systems	All coals or blends applicable to plants with or without wet FGD	1 or 2.
4	Other	All coals individually or blends and all existing equipment configurations	1 or 2.

1. Full-scale (minimum 100 MWe).
2. Slip-stream (minimum 10 MWe).

Scale of Testing

DOE anticipates allocating $1.5 million or less in cost sharing per test site. DOE recognizes that certain mercury control technologies proposed for full-scale testing may require significant outlays for capital equipment in order to be tested. Given that the funding available for this solicitation is limited and is to be used primarily for testing and evaluation of the performance of the proposed technology and not for the purchase of equipment, DOE is allowing for slip-stream testing of technologies under Topic Areas 3 and 4. However, if the offeror wants to test at full scale, then they would be required to cover the additional costs above DOE threshold of $1.5 million per test site (or 75% cost sharing, whichever is less). DOE anticipates that funds will be approximately allocated as 2/3 to full-scale testing and 1/3 to pilot-scale testing.

It is anticipated that there will be 9–12 Financial Assistance (Cooperative Agreements) awards with performance periods ranging from 12–42 months. The total estimated Award Value for all projects awarded under this solicitation is estimated at $19–$25 million with total federal funding anticipated between $15–$20 million with a required recipient cost sharing of 25% of total cost.

Eligibility for participation in this Program Solicitation is considered to be full and open. All interested parties may apply. The solicitation will contain a complete description of the evaluation factors and the relative importance of each factor. Applications submitted by or on behalf of (1) Another Federal agency; (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management Operating (M&O) contractor will not be eligible for award under this solicitation. However, an application that includes performance of a portion of the work by a DOE M&O contractor will be evaluated and may be considered for award subject to the provisions to be set forth in Program Solicitation DE–PS26–03NT41718.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business.* Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA November 28, 2002.

Richard D. Rogus,

Acting Director, Acquisition and Assistance Division.

[FR Doc. 02–31202 Filed 12–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of claims and the availability of funds for reimbursement in fiscal year (FY) 2003.

SUMMARY: This Notice announces the Department of Energy (DOE) acceptance of claims in FY 2003 for reimbursement under Title X of the Energy Policy Act of 1992. The President's FY 2003 budget request includes $1 million for reimbursement of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992. DOE anticipates on making prorated payments on approved claims received in FY 2002 and prior years' unpaid approved claim amounts by April 30, 2003, subject to the availability of FY 2003 appropriations.

DATES: The closing date for the submission of claims in FY 2003 is May 1, 2003. These claims will be processed for payment by April 30, 2004, based on the availability of funds from congressional appropriations.

ADDRESSES: Claims should be forwarded by certified or registered mail, return receipt requested, to the U.S. Department of Energy, Albuquerque Operations Office, Environmental

Restoration Division, P.O. Box 5400, Albuquerque, NM 87185–5400, or by express mail to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, H and Pennsylvania Streets, Albuquerque, NM 87116. All claims should be addressed to the attention of Mr. Gilbert Maldonado. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Gilbert Maldonado at (505) 845–4035 of the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of the Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington, DC, on this 3rd day of December 2002.

David E. Mathes,

Team Leader, Albuquerque/Nevada Team, Small Sites Closure Office, Office of Site Closure.

[FR Doc. 02–31201 Filed 12–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–28–000]

Town of Wallingford, Connecticut, Department of Public Utilities, Electric Division; and Connecticut Municipal Electric Energy Cooperative; Complainants, v. *Connecticut Light and Power Company; Select Energy, Inc.; and Northeast Utilities Service Company; Respondents;* Notice of Complaint

December 5, 2002.

Take notice that on December 4, 2002, the Town of Wallingford, Connecticut, Department of Public Utilities, Electric Division and the Connecticut Municipal Electric Energy Cooperative (collectively, Complainants) filed with the Federal Energy Regulatory Commission (Commission) a Complaint against the Connecticut Light and Power Company (CL&P), its agent Select Energy, Inc. and the Northeast Utilities Service Company (collectively, Respondents). Complainants are seeking an immediate order from the Commission enforcing the provisions of a FERC-filed power sales agreement by directing CL&P to participate in a contractually mandated arbitration proceeding.

Respondents have been served with a copy of the Complaint.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before December 20, 2002. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31188 Filed 12–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–21–000, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Filings

December 3, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Pacific Gas and Electric Company California Independent System Operator Corporation

[Docket No. EC03–21–000]

Take notice that on November 25, 2002, Pacific Gas and Electric Company and the California Independent System Operator Corporation filed with the Federal Energy Regulatory Commission (Commission) a joint application pursuant to section 203 of the Federal Power Act seeking authorization for PG&E's sale of certain transmission facilities under FERC jurisdiction to Turlock Irrigation District.

Comment Date: December 16, 2002.

2. Idaho Power Company and IDACORP Energy, L.P.

[Docket No. EC03–24–000]

Take notice that on November 27, 2002, Idaho Power Company (Idaho Power) and IDACORP Energy, L.P. (IELP, collectively, Applicants) filed with the Federal Energy Regulatory Commission (Commission) an Application for Commission Approval of Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act. The jurisdictional facilities that are

the subject of the Application are certain wholesale power sales and transmission service transactions (Non-Ops Transactions) between Idaho Power and various counterparties. By their Application, Applicants seek Commission approval for the assignment of the Non-Ops Transactions from Idaho Power to IELP.

Comment Date: December 18, 2002.

3. HC Power Marketing LLC

[Docket Nos. EC03–26–000 and ER02–388–001]

Take notice that on November 27, 2002, HC Power Marketing LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for authorization pursuant to section 203 of the Federal Power Act and notice of change in status with respect to the transfer of the upstream ownership of Applicant from Blue Natsource Holding Co., Inc. (Natsource Holding) to Natsource LLC (Natsource).

Comment Date: December 18, 2002.

4. EPCOR Merchant and Capital (US) Inc., EPCOR Power Development, Inc., EPDC, Inc., Frederickson Power L.P.

[ER02–783–001, ER02–852–001, ER02–855–001, ER01–2262–003]

Take notice that on November 27, 2002, EPCOR Merchant and Capital (US) Inc. (EMC), EPCOR Power Development, Inc. (EPCOR Power), EPDC, Inc. (EPDC), and Frederickson Power L.P. (Frederickson Power) (collectively, the Applicants) filed with the Federal Energy Regulatory Commission (Commission) their Notice of Change in Status under their market-based rate tariffs on file with the Commission to address the proposed intracorporate reorganization under a to-be-formed U.S. parent, EPCOR Energy (U.S.) G.P.

Comment Date: December 18, 2002.

5. Central Maine Power Company

[Docket No. ER02–2363–001]

Please take notice that on November 27, 2002, Central Maine Power Company (CMP) submitted the Support Service Agreement between CMP and Maine Yankee Atomic Power Company, corrected as to Order 614 markings, and designated as Original Rate Schedule FERC No. 114, First Revised, with an effective date of January 1, 2002.

Comment Date: December 18, 2002.

6. Southern California Edison Company

[Docket No. ER02–2521–001]

Take notice that on November 29, 2002, Southern California Edison Company (SCE) tenders for filing supplemental information requested by FERC Staff in a letter dated October 29, 2002. In addition, SCE tenders for filing revised rate sheets (Revised Sheets) to the Service Agreements originally filed in this docket on August 30, 2002.

SCE respectfully requests the Commission to assign an effective date of August 10, 2002. Copies of this filing were served upon the Federal Energy Regulatory Commission and those parties listed in the intervention filed by CDWR.

Comment Date: December 20, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2541–001]

Take notice that on November 29, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order in Midwest Independent Transmission System Operator Inc., 101 FERC 61,106. The Midwest ISO has requested an effective date of November 4, 2002.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all required parties. The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: December 20, 2002.

8. San Diego Gas & Electric Company

[Docket No. ER03–217–000]

Take notice that on November 25, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its Service Agreements numbers 17 and 18 to its FERC Electric Tariff, First Revised Volume No. 6, two interconnection agreements. Both agreements relate to the interconnection to SDG&E's transmission system of a new generation plant owned by Termoelectrica de Mexicali, S. de R.L. de C.V (TDM–MX), and interconnected with SDG&E's electrical system via a tieline owned by Termoelectrica U.S., LLC (TDM–US) (collectively referred to as TDM). The plant, with a capacity of 650 megawatts, is being constructed on an expedited basis to meet electricity demand in the Western United States, Baja California, Mexico, and the San Diego Basin. It is located near Mexicali, Mexico, and is expected to begin commercial operation on or about April 7, 2003, although the in-service date for certain Interconnection Facilities is November 23, 2002. Those facilities are needed to provide interconnection services required to accommodate TDM's backfeed power requirements, not being provided by SDG&E, from SDG&E's transmission system, to accommodate generation construction activities.

Service Agreement No. 17 is the Interconnection Facilities Agreement dated November 20, 2002 between SDG&E and TDM, under which SDG&E will construct, operate and maintain the proposed interconnection facilities. Service Agreement No. 18, the Interconnection Agreement between SDG&E and TDM, dated November 20, 2002, establishes interconnection and operating responsibilities and associated communications procedures between the parties.

SDG&E requests that the Commission waive the sixty-day notice requirement and establish an effective date of November 22, 2002 for both agreements.

SDG&E states that copies of the filing have been served on Termoelectrica de Mexicali S. de R.L. de C.V., Termoelectrica U.S., LLC, and on the California Public Utilities Commission.

Comment Date: December 16. 2002.

9. California Independent System Operator Corporation

[Docket No. ER03–218–000]

Take notice that on November 25, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) Amendment No. 47 to the ISO Tariff. The purpose of Amendment No. 47 is to modify the Tariff to be consistent with the provisions of the Transmission Control Agreement (TCA), as amended to accommodate the Cities of Anaheim, Azusa, Banning, and Riverside, California (together Southern Cities), becoming Participating Transmission Owners.

The ISO states that this filing has been served on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and all parties, including the signatories to the TCA, with effective Scheduling Coordinator Agreements under the ISO Tariff.

The ISO is requesting waiver of the 60-day notice requirement to allow Amendment No. 47 be made effective January 1, 2003.

Comment Date: December 16, 2002.

10. Southern California Edison Company

[Docket No. ER03–228–000]

Take notice that on November 27, 2002, Southern California Edison Company (SCE) tendered for filing revised rate sheets (Revised Sheets) to the Interconnection Facilities Agreement (Interconnection Agreement) between SCE and Cabazon Wind Partners, LLC (Cabazon), Service Agreement No. 51, under SCE's Wholesale Distribution Access Tariff (WDAT), FERC Electric Tariff Original Volume No. 5.

The Revised Sheets amend the Interconnection Agreement to include the scope and cost of additional work identified by SCE after the Interconnection Agreement was executed and to revise the ITCC factor from 0.34 to 0.27 for payments due on or after July 1, 2002, as a result of changes in the depreciation provisions of the Internal Revenue Code.

SCE respectfully requests the Revised Sheets become effective on November 28, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California and Cabazon.

Comment Date: December 18, 2002.

10. Armstrong Energy Limited Partnership, LLLP

[Docket No. ER03–229–000]

Take notice that on November 27, 2002, Armstrong Energy Limited Partnership, LLLP (Armstrong or the Company) respectfully tendered for filing a rate schedule for reactive power and voltage control from Generation Sources Service.

The Company respectfully requests a waiver of the Commission's regulations and permit an effective date of December 1, 2002. Copies of the filing were served upon the PJM Interconnection, L.L.C., Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: December 18, 2002.

11. Bridgeport Energy LLC

[Docket No. ER03–230–000]

Take notice that on November 27, 2002, Bridgeport Energy LLC. (Bridgeport) tendered for filing a Notice of Termination of Service Agreement No. 1 under its FERC Electric Tariff No. 1. The Service Agreement at issue is an Installed Capability Purchase and Sale Agreement (ICAP Agreement) between Bridgeport and Northeast Utilities Service Company (NU), as agent for Holyoke Power and Electric Company (Holyoke), that was executed on July 2, 1998 and accepted for filing on October 8, 1998. Thereafter, the ICAP Agreement was assigned to Select Energy Company (Select). Bridgeport and Select have mutually agreed to terminate the ICAP Agreement, effective November 13, 2002. Copies of the filing have been served upon Select.

Comment Date: December 18, 2002.

12. American Transmission Company LLC

[Docket No. ER03–231–000]

Take notice that on November 27, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a revised Generation-Transmission Interconnection Agreement between ATCLLC and Riverside Energy Center, LLC (Revised Service Agreement No. 234) consisting of a revised Exhibit 11 and otherwise remaining as originally filed and accepted by the Commission by letter order dated June 11,2002. ATCLLC requests retention of the original effective date of April 7, 2002.

Comment Date: December 18, 2002.

13. PJM Interconnection, L.L.C.

[Docket No. ER03–232–000]

Take notice that on November 27, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing revisions o the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to (a) incorporate Commission-approved changes made to the Fourth Revised Volume 1 of the PJM Tariff and the First Revised Operating Agreement establishing the PJM Economic Load Response Program into the currently effective Fifth Revised Volume 1 of the PJM Tariff and the Second Revised Operating Agreement and (b) to delete language the Commission rejected but that inadvertently was reinserted into the Fifth Revised Volume I of the PJM Tariff.

Consistent with the Commission-approved effective date for the PJM Economic Load Response Program, PJM requests an effective date of June 1, 2002 for the new PJM Economic Load Response Program sheets. Consistent with the effective date of the Fifth Revised Volume 1 of the PJM Tariff, PJM requests an effective date of April 1, 2002 for First Revised Sheet No. 216A which merely deletes language that erroneously was included in the Fifth Revised Volume 1 of the PJM Tariff.

Copies of this filing have been served on all PJM members, and the state electric utility commissions in the PJM region.

Comment Date: December 18, 2002.

14. PJM Interconnection, L.L.C.

[Docket No. ER03–233–000]

Take notice that on November 27, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing sixteen executed interconnection service agreements (ISAs) and interim interconnection service agreements (Interim ISAs) between PJM and E.I. du Pont de Nemours and Company, Exelon Corporation, Mantua Creek Generating Company, LP, PSEG Fossil LLC, Conectiv Delmarva Generation, Inc., Conectiv Mid-Merit, Inc., PPL Brunner Island, L.L.C., Calpine Construction Finance Company, L.P., Constellation Power Source Generation, Inc., Delaware Municipal Electric Corporation, PSEG Power, LLC, Northampton Generating Company, L.P., PEI Power II L.L.C., Lebanon Methane Recovery, Inc., and eight notices of cancellation of certain ISAs and Interim ISAs that have been superseded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties to the agreements. 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: December 18, 2002.

15. New England Power Pool

[Docket No. ER03–234–000]

Take notice that on November 29, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Great Bay Power Marketing, Inc. (GBPMI). The Participants Committee requests a December 1, 2002 effective date for commencement of participation in NEPOOL by GBPMI.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: December 18, 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (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. 02–31186 Filed 12–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–23–000, et al.]

Westar Energy, Inc., et al.; Electric Rate and Corporate Filings

December 2, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Westar Energy, Inc. and Midwest Energy, Inc.

[Docket No. EC03–23–000]

Take notice that on November 25, 2002, Westar Energy, Inc. (Westar Energy) and Midwest Energy, Inc. (Midwest Energy) jointly filed an application with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, and part 33 of the Commission regulations, 18 CFR part 33. Westar Energy and Midwest Energy request authorization and approval of the sale by Westar Energy and the purchase by Midwest Energy of certain jurisdictional transmission assets located in the State of Kansas, and assignment of certain wholesale power sales and transmission contracts.

Comment Date: December 16, 2002.

2. SOWEGA Power LLC, Baconton Power LLC

[Docket No. ER99–3427–002 and ER00–2398–004]

Take notice that on November 25, 2002, Baconton Power LLC and SOWEGA Power LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) a combined three-year updated market analysis related to their existing market-based rate approvals consistent with the Commission's orders in the above referenced dockets.

Comment Date: December 16, 2002.

3. Mt. Carmel Public Utility Co.

[Docket No. ER02–2293–002]

Take notice that on November 25, 2002, Mt. Carmel Public Utility Co. (Mt. Carmel) tendered for filing with the Federal Energy Regulatory Commission (Commission) executed Service and Operating Agreements between Mt. Carmel and Central Illinois Public Service Co. (dba Ameren/CIPS). Mt. Carmel asserts that the purpose of the Agreement is to permit Mt. Carmel to provide transmission service to Ameren/CIPS pursuant to Mt. Carmel's Open Access Transmission Tariff.

Comment Date: December 16, 2002.

4. California Independent System Operator Corporation

[Docket Nos. ER02–2576–003 and ER02–1656–013]

Take notice that on November 25, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing made in compliance with the Commission's October 25, 2002 ''Order on Proposed Tariff Revisions and Compliance Filing.'' The compliance filing revises Section 2.2.13.1 of the ISO's Tariff, in accordance with the October 25 Order.

The ISO states that this filing has been served on all entities that are on the official service list for this docket.

Comment Date: December 16, 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 field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (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. 02–31187 Filed 12–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Request for Comment on the Revised Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures

December 5, 2002.

The Office of Energy Projects (OEP) staff has revised the Upland Erosion Control, Revegetation and Maintenance Plan (Plan) and the Wetland and Waterbody Construction and Mitigation Procedures (Procedures) referred to at 18 CFR 157.206(b)(3)(iv) of the Commission's regulations. The staff is providing one extra opportunity for public comment on the proposed revisions.

The proposed revisions to the Plan and Procedures were advertised by the Commission staff in a Notice issued January 11, 2002. This final draft incorporates comments gathered over the past 8 months from the natural gas pipeline industry and other agencies. The Plan and Procedures were last updated December 2, 1994. Many of the staff's proposed changes better address regional issues by converting some

measures into performance-based standards. Other modifications provide necessary updates to reflect current laws and regulations.

We have posted final draft versions of the revised Plan and Procedures on our Web site showing the changes in a redline and strikeout format. The final drafts are available at *http://www.ferc.gov/gas/environment/guidelines.htm.*

Comments on the proposed revisions should be sent by electronic mail no later than December 20, 2002, to plan.comments@ferc.gov.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31189 Filed 12–10–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7420–2]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Equivalent Method for PM_{10}

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of a new equivalent method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new equivalent method for measuring concentrations of particulate matter as PM_{10} in the ambient air.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hunike, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–3737, e-mail: *Hunike.Elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the NAAQSs.

The EPA hereby announces the designation of one new equivalent method for measuring concentrations of particulate matter as PM_{10} in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new equivalent method for PM_{10} is an automated method (analyzer) that utilizes a measurement principle based on sample collection by filtration and analysis by beta-ray attenuation. The newly designated equivalent method is identified as follows:

EQPM–1102–150, ''Thermo Andersen Series FH 62 C14 Continuous PM10 Ambient Particulate Monitor,'' operated for 24-hour average measurements, with the specified 10-micron Inlet, Inlet Connector, Sample Tube with heater, Roof Flange Kit, Mass Foil Kit, Pump Kit, Sample Filter Tape; with Operational Settings of 1000 L/h (16.67 L/min) sample flow rate, daily filter change, auto filter change at volumetric flow < 950 L/h, auto filter change at Mass > 1500 micrograms, and factory default calculation mode settings; and with operational calibration and servicing as outlined in the Operator Manual.

An application for an equivalent method determination for this method was received by the EPA on August 5, 2002. The method is available commercially from the applicant, Thermo Anderson, 500 Technology Court, Smyrna, Georgia 30082 (*http://www.ThermoAndersen.com*).

Test analyzers representative of this method have been tested by the applicant in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.*, configuration or operational settings) specified in the applicable designation method description (see the identification of the method above).

Users of the method should also note that its equivalent method designation applies only to 24-hour average PM_{10} concentration measurements. The Series FH 62 C14 Monitor can also provide average PM_{10} concentration measurements over other, shorter averaging periods, including one-half-hour averages. However, such shorter average concentration measurements may be less precise than the 24-hour measurements and are not required for use in determining attainment under the air quality surveillance requirements of part 58 (although they may be useful for other purposes). Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Part 1,'' EPA–454/R–98–004. Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 (Modifications of Methods by Users) of appendix C to 40 CFR part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Jewell Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. 02–31241 Filed 12–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0251; FRL–7283–9]

Diazinon; Availability of Interim Reregistration Eligibility Decision Document for Comment; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of September 25, 2002, announcing the availability and start of a 60–day public comment period on the Interim Reregistration Eligibility Decision (IRED) document for the pesticide active ingredient diazinon. This document is reopening the comment period from November 25, 2002, to January 10, 2003.

DATES: Comments identified by docket ID number OPP–2002–0251 must be received on or before January 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the September 25, 2002 **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5776; e-mail address: parsons.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the September 25, 2002 **Federal Register** Notice, a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get 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–2002–0251. 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 are 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/.

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.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the September 25, 2002 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document reopens the public comment period established in the **Federal Register** of September 25, 2002 (67 FR 60231) (FRL–7274–4). In that document, EPA announced the availability of the IRED for the pesticide active ingredient diazinon and invited comment on the benefit assessments and risk mitigation in the document. EPA is hereby reopening the comment

period, which ended on November 25, 2002, to January 10, 2003.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 27, 2002.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–31242 Filed 12–10–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0269; FRL–7189–6]

Ethoprop; Availability of Interim Reregistration Eligibility Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability of the Interim Reregistration Eligibility Decision (IRED) document for the pesticide active ingredient ethoprop. The IRED represents EPA's formal regulatory assessment of the health and environmental data base of the subject chemical and presents the Agency's interim determination regarding which pesticidal uses are eligible for reregistration.

FOR FURTHER INFORMATION CONTACT: Anthony Britten, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8179; e-mail address: *britten.anthony@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; pesticide 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 identification (ID) number OPP–2002–0269. 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 IRED documents and IRED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Web site, at *http://www.epa.gov/pesticides/reregistration/status.htm*.

An electronic version of the latest 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 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.

II. Background

A. What Action is the Agency Taking?

EPA has assessed the risks posed by the use of the active ingredient ethoprop, and issued an IRED for this organophosphate (OP) pesticide. EPA issues an IRED for a pesticide that is undergoing reregistration, requires a reregistration eligibility decision, and also needs a cumulative assessment under FQPA. The IRED, issued after EPA completes the individual pesticide's aggregate risk assessment, may include taking risk reduction measures; for example, reducing risks to workers or eliminating uses that the registrant no longer wishes to maintain, to gain the benefits of these changes before the final RED can be issued following the Agency's consideration of cumulative risks. Through cumulative risk assessment, EPA will consider whether the risks posed by a group of pesticides that act the same way in the body meet the current safety standard of ''reasonable certainty of no harm'' as defined by the FQPA.

Provided that risk mitigation measures stipulated in the IRED document are adopted, EPA has made the determination that ethoprop fits into its own ''risk cup''-- that is, its individual and aggregate risks are within acceptable levels. Thus, ethoprop products, except for the liquid formulation, are eligible for reregistration, pending consideration of the cumulative risk for all OPs. The Agency will make a reregistration eligibility decision for the liquid formulation of ethoprop at a later time, provided certain conditions are fulfilled.

All registrants of pesticide products containing the active ingredient listed in this document have been sent the IRED document, and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of its 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. EPA worked extensively with affected parties to reach the decisions presented in the IRED document. Numerous opportunities for public comment were offered as the IRED was being developed. The ethoprop IRED document, therefore, is issued in final, without a formal public comment period.

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

The legal authority for this IRED 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: November 22, 2002.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–31163 Filed 12–10–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0323; FRL–7283–1]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 68467–EUP–A from Dow AgroSciences requesting an experimental use permit (EUP) for the plant incorporated-protectant *Bacillus thuringiensis* Cry1F and Cry1Ac. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2002–0323, must be received on or before January 10, 2003.

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: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@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 those persons who are interested in agricultural biotechnology or may be required to conduct testing of chemical substances under the Federal, Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). 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 identification (ID) number OPP–2002–0323. 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/*.

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 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.

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–2002–0323 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–2002–0323. 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, 20460–0001, Attention: Docket ID Number OPP–2002–0323.

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–2002–0323. 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.
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

Dow AgroSciences has submitted an application for an EUP for the plant incorporated-protectant *Bacillus thuringiensis* Cry1F and Cry1Ac in cotton. The requested number of acres for this plant incorporated-protectant is 2,826. The EUP is for the states of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Puerto Rico, South Carolina, Tennessee, and Texas. Test plants will consist of cotton.

III. What Action is the Agency Taking?

Following the review of the Dow AgroSciences application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

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

EPA takes this action under 40 CFR part 172.

List of Subjects

Environmental protection, Experimental use permits.

Dated: November 22, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–31165 Filed 12–10–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0285; FRL–7285–4]

Draft Guidance on How to Comply with Data Citation Regulations; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the**Federal Register** of November 13, 2002, titled ''Draft Guidance on How to Comply with Data Citation Regulations.'' This document is extending the comment period for 30 days, from December 13, 2002, to January 12, 2003.

DATES: Comments, identified by docket ID number OPP–2002–0285 must be received on or before January 12, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the November 13, 2002 **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: Peter Caulkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5447; e-mail address: *caulkins.peter@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the November 13, 2002 **Federal Register** notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0285. 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/*.

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.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, follow the detailed instructions as provided in Unit I.C. of the**SUPPLEMENTARY INFORMATION** of the November 13, 2002**Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document extends the public comment period established in the**Federal Register** of November 13, 2002 (67 FR 68866) (FRL–7278–1). In that document, EPA announcedthe availability of draft guidance on how to comply with the Agency's data citation requirements for registration of new pesticide products under the Federal Insecticide, Fungicide, and Rodenticide Act. The draft quidance will assist applicants in complying with the data citation requirements that ultimately would result in fewer delays in the registration process. EPA is hereby extending the comment period, which was set to end on December 13, 2002, to January 12, 2003.

List of Subjects

Environmental protection, Administrative practice and procedures, Pesticides and pests.

Dated: December 4, 2002.

Peter Caulkins,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–31164 Filed 12–6–02; 10:10 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Wednesday, December 11, 2002

December 4, 2002.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on, which is scheduled to commence at in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireless Telecommunications.	*Title:* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services. *Summary:* The Commission will consider a Notice of Inquiry seeking information that can be used to analyze the status of competition in the CMRS industry for purpose of its Eighth Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services.

Item No.	Bureau	Subject
2	Wireless Telecommunications.	*Title:* Facilitating the Provisions of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services. *Summary:* The Commission will consider a Notice of Inquiry that would seek comment on the effectiveness of current regulatory tools in facilitating the delivery of spectrum-based services to rural areas and the extent to which rural telephone companies and other entities seeking to serve rural areas have opportunities to provide spectrum-based services.
3	Wireless Telecommunications.	*Title:* Revisions of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102); Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 110–1660.5 MHZ Band (IB Docket No. 99–67). *Summary:* The Commission will consider a further Notice of Proposed Rulemaking concerning access to emergency services from services and devices that may not be currently within the scope of the commission's E911 rules.
4	Wireless Telecommunications.	The Wireless Telecommunications Bureau will report on the status of unintentional wireless 911 calls.
5	Office of Engineering and Technology. *Summary:* The Commission will consider a Notice of inquiry concerning the possibility of permitting unlicensed transmitters to operate in additional frequency bands.	*Title:* Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–31381 Filed 12–9–02; 2:48 pm]

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.: 011325–029.

Title: Westbound Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd., APL Co. PTE Ltd., Hapag-Lloyd Container Linie GmbH, P&O Nedlloyd B.V., COSCO Container Lines Company, Limited, Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, P&O Nedlloyd Limited, Yangming Marine Transport Corp., Kawasaki Kisen Kaisha, Ltd., Orient Overseas Container Line Limited, Evergreen Marine Corp. (Taiwan) Ltd., Hanjin Shipping Co., Ltd.

Synopsis: The amendment restates and updates the agreement by deleting references to unused or obsolete provisions, streamlines the parties' authority under the agreement, and adds a new provision authorizing the parties to exchange information with the Ocean Carrier Equipment Management Association.

Agreement No.: 011730–002.

Title: GWF/Dole Space Charter and Sailing Agreement.

Parties: Great White Fleet (US) Ltd., Dole Ocean Cargo Express, Inc.

Synopsis: The proposed amendment removes the December 31, 2002, expiration date from the agreement. The parties request expedited review.

Agreement No.: 011745–005.

Title: Evergreen/Lloyd Triestino/Hatsu Marine Alliance Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd., Lloyd Triestino Di Navegazione S.p.A., Hatsu Marine Limited.

Synopsis: The proposed amendment extends the scope of the agreement to include ports in Europe and amends the service contract provisions to provide, among other things, authority for the parties to discuss guidelines with respect to the terms and conditions of their individual service contracts.

Agreement No.: 201045–005.

Title: Master Contract Assessment Agreement.

Parties: United States Maritime Alliance, Ltd., International Longshoremen's Association, AFL–CIO.

Synopsis: The amendment revises the calculations for the Container Royalty Fund under the agreement.

By Order of the Federal Maritime Commission.

Dated: December 6, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–31221 Filed 12–10–02; 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: 16013NF.
Name: Admiral Line, Inc.
Address: 662 Dell Road, Carlstadt, NJ 07072.
Date Revoked: November 7, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17370NF.
Name: Antilles Wholesale Company.
Address: 1759 Bay Road, Miami, FL 33139.
Date Revoked: November 9, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17571N.
Name: Atlantic Cargo Lines, Corporation.
Address: 10101 SW 8th Terrace, Miami, FL 33172.
Date Revoked: November 16, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17466N.
Name: Compass Shipping, Inc.
Address: 525 Empire Blvd., Brooklyn, NY 11225.
Date Revoked: November 1, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3459N.
Name: Cross Ocean International, Inc.
Address: 10101 S. Roberts Road, Suite 200, Palos Hills, IL 60465.
Date Revoked: November 3, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16995N and 16995F.
Name: D.L. Central America, Inc.
Address: 3500 NW 115th Avenue, Miami, FL 33178.
Date Revoked: November 14, 2002 and November 9, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17308N.
Name: Freightsmart.com, Inc. dba Saskia Container Line.
Address: 4615 Post Oak Place, Suite 145, Houston, TX 77027.
Date Revoked: October 27, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16800F.
Name: Global Freight Forwarding, Inc.
Address: 324 East 1st Street, Suite 380, Los Angeles, CA 90012.
Date Revoked: November 9, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3876F.
Name: Hawk International Transportation, Inc.
Address: 120 Eastern Avenue, Suite 204 A, Chelsea, MA 02150.
Date Revoked: October 11, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4306F.
Name: International Transport Services, Inc.
Address: 18747 Sheldon Road, Cleveland, OH 44130.
Date Revoked: November 3, 2002.
Reason: Failed to maintain a valid bond.

License Number: 8097N.
Name: Jacksonville Caribbean Broker Services, Inc.
Address: 8550 Posey Road, Jacksonville, FL 32220.
Date Revoked: November 21, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15688N.
Name: Millennium Logistics Services, Inc.
Address: 6709 NW 84th Avenue, Miami, FL 33166.
Date Revoked: November 10, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16281N.
Name: Pan Asia Line Corporation.
Address: 820 S. Garfield Avenue, #303, Alhambra, CA 91801.
Date Revoked: October 23, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11170N.
Name: Sage Freight Systems Inc. dba Sage Container Lines.
Address: 182–30 150th Road, Suite 108, Jamaica, NY 11413.
Date Revoked: October 16, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4350NF.
Name: Seaborne International, Inc. dba Seaborne Express Line.
Address: 11222 La Cienega Blvd., Suite 470, Inglewood, CA 90304.
Date Revoked: November 9, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17052F.
Name: Sec Sea & Air, Inc.
Address: 520 E. Carson Plaza Court, Suite 212A, Carson, CA 90746.
Date Revoked: November 4, 2002.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–31223 Filed 12–10–02; 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 part 515.

License No.	Name/address	Date reissued
12918N	Freight Options Unlimited, 14247 East Don Julian Road, City of Industry, CA 91746	April 21, 2002.
3574F	I.T.N. of Miami, Inc., dba International Transportation Network, 7007 NW 30th Street, Miami, FL 33122.	May 25, 2002.
16051N	Trans-Net, Inc., dba Trans-Net, 710 5th Avenue, NW., Issaquah, WA 98027	June 19, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–31224 Filed 12–10–02; 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 part 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

Pacheco Express Shipping, Inc., 1570 Webster Avenue, Bronx, NY 10457, Officers: Luis Hernandez, President, (Qualifying Individual), Nieulka D. Rivera, Vice President.

Vizion Logistics, L.L.C., 2275 Huntington Drive, #816, San Marino, CA 91108, Officers: Albert Wei, President, (Qualifying Individual), Benjamin Wei, Vice President.

Willy Express Shipping Inc., 1327 Webster Avenue, Bronx, NY 10456, Officers: Nelson W. Rivera, President, (Qualifying Individual).

City Ocean International, Inc., 17800 Castleton Street, #388, City of Industry, CA 91748, Officers: Rachel Zhu Zhou, Vice President, (Qualifying Individual), Qi Wang, C.F.O.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Action International Movers, Inc., 10004 Belhaven Road, Bethesda, MD 20817, Officer: Bertrand Peltier, President, (Qualifying Individual).

Dated: December 6, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–31222 Filed 12–10–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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.

Proposed Project: Design for the Evaluation of the Maternal and Child Health Bureau, Bright Futures for Women's Health and Wellness Initiative and Preliminary Evaluation of Initial Products—New

The HRSA Office of Women's Health (OWH) is developing the Bright Futures for Women's Health and Wellness (BFWHW) Initiative to help expand the scope of women's preventive health activities, particularly related to nutrition and physical activity. A pilot test of the BFWHW health promotion tools and materials will be conducted in order to improve the effectiveness of the tools themselves, and to gather feedback on productive strategies for disseminating the tools for appropriate use to training providers and community organizations. Thus, the empirical findings from this pilot test will help shape the final BFWHW tool development. This data collection effort will ensure that the HRSA OWH develops targeted and effective tools for translating health prevention recommendations into nutrition and physical activity messages.

Toward this end, data will be collected from women patients, providers, and representatives of community organizations. Women patients ages 18 and over of various racial and ethnic backgrounds will complete questionnaires at three health centers in different geographic areas of the country. The health care providers at these same sites will also be asked to complete a brief questionnaire. Telephone interviews will be completed with representatives from community organizations located in the service areas of these health centers. The data collection period is estimated to last three weeks.

The estimated response burden is as follows:

Activity	Number of respondents	Responses per respondent	Total responses	Minutes per response	Total burden hours
Women Patient Questionnaire	2,430	1	2,430	5	202.5
Provider Questionnaire	18	1	18	5	1.5
Community Representative Telephone Interview	15	1	15	35	8.75
Total	2,463	.....	2,463	.....	213

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 4, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–31191 Filed 12–10–02; 8:45 am]

BILLING CODE 4165–15–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 January 10, 2003.

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: Arnold W. Goldschlager, Hillsborough, CA, PRT–065348.

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: Jaydee H. Swisher, Laredo, TX, PRT–065347.

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 J. Le Mieux, Burton, MI, PRT–065433.

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: Columbus Zoo and Aquarium, Powell, OH, PRT–055821.

The applicant requests a permit to purchase in interstate commerce one female Asian elephant (*Elephas maximus*) from Have Trunk Will Travel, Perris, CA, for the purpose of enhancement of the survival of the species through captive propagation.

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: David G. Aul, Arlington Heights, IL, PRT–065354.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay 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.

Dated: November 29, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–31203 Filed 12–10–02; 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 January 10, 2003.

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: Feld Entertainment, Vienna, VA

The applicant requests permits to export, re-export, and re-import tigers (*Panthera tigris*) and their future progeny if born overseas to and 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 tiger names and PRT numbers are as follows: Mohan, 061900; Apollo, 063774; Assam, 063775; Ghandi, 063776; Jaipur, 063777; Tibet, 063778; Tora, 063779; Vanja, 063780; Ares, 063781; Athena, 063782; Marissa, 063783; Shankar, 063784; and Ussuri, 063785.

Applicant: Donald L. Fetterolf, Somerset, PA, PRT–065225

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: Julian Weltsch, Phoenix, AZ, PRT–061112

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 A. Powell, Texas A & M University, Department of Wildlife and Fisheries Sciences, College Station, TX, PRT–064189

The applicant requests a permit to import biological samples taken from wild specimens of black-capped vireo (*Vireo atricapillus*) for the purpose of scientific research. This notification covers activities conducted by the applicant over a period of 5 years.

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: November 22, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–31205 Filed 12–10–02; 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 July 9, 2002, a notice was published in the **Federal Register** (67 FR 45530), that an application had been filed with the Fish and Wildlife Service by Ikande L.V. Larkin, University of Florida to amend a permit (PRT–038448) to conduct scientific research on captive-held and wild Florida manatees (*Trichechus manatus*) to study manatee reproductive physiology and indicators of stress.

Notice is hereby given that on November 26, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), the Fish and Wildlife Service issued the requested amended permit subject to certain conditions set forth therein.

Dated: November 29, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–31204 Filed 12–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Schaghticoke Tribal Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary—Indian Affairs proposes to decline to acknowledge that the Schaghticoke Tribal Nation (STN), c/o Mr. Richard L. Velky, 33 Elizabeth Street, 4th Floor, Derby, Connecticut 06148, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner does not satisfy all seven of the criteria set forth in 25 CFR 83.7, specifically criteria (b), and (c), and therefore does not meet the requirements for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.10(i), any individual or organization wishing to comment on the proposed finding may submit arguments and evidence to support or rebut the proposed finding. The time periods and some of the procedures in 25 CFR part 83 for considering the STN petition are modified by a court-approved negotiated agreement in pending litigation. Parties to the litigation have six months from the service of the proposed finding to provide comments, documents and arguments on the proposed finding to the Department. Interested and informed parties who are not also parties to the litigation have 180 days from the date of publication of this notice of the proposed finding to provide comments to the Department. These comment periods are virtually identical. The petitioner and all interested and informed parties commenting on the proposed finding must provide copies of their comments to all parties and *amici curiae* to the litigation at the same time. The names and addresses of commenters on the proposed finding will be available for public review. Commenters wishing to have their name and/or address withheld must state this request prominently at the beginning of their comments. Such a request will be honored to the extent allowable by law.

ADDRESSES: Comments on the proposed finding or requests for a copy of the report which summarizes the evidence, reasoning, and analyses that are the basis for this proposed finding, or a list of parties in the litigation, should be addressed to the Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street NW., Mailstop 4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with authority delegated by the Secretary of

the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The STN petition (petition #79) is being considered under a court-approved negotiated agreement in pending litigation which modifies the time periods in 25 CFR part 83 and some of the procedures, superceding the regulatory provisions for these time periods and procedures. This order, entered May 8, 2001, and modified by court order on February 14, 2002, established time lines for submission of materials to the Department and deadlines for submission of comments, issuance of a proposed finding and issuance of a final determination. The agreement does not modify the criteria nor the standards required to demonstrate that the criteria are met.

The petitioner's letter of intent to petition, under the name the ''Schaghticoke Indian Tribe,'' was filed with the Department on December 14, 1981. The petitioning group changed its name to Schaghticoke Tribal Nation of Kent when it amended its governing document at a membership meeting in 1991.

The Schaghticoke have been a state-recognized tribe, with a state reservation, from colonial times until the present. However, the specifics of the State of Connecticut's dealings with state-recognized tribes differed from tribe to tribe in at least one important respect that is relevant to the extent to which state recognition provides additional evidence for the community and political influence criteria in 25 CFR 83.7(b) and 25 CFR 83.7(c). In this instance, there are substantial periods of time, from the early 1800's until 1875 and from 1885 until the late 1960's, when the State did not deal with or identify formal or informal leaders of the Schaghticoke, and did not consult with members concerning issues which concerned the entire group. The State's relationship here thus differs materially from that with the historical Eastern Pequot tribe, where there were recognized leaders with whom the State or state-authorized officials dealt.

While continuous State recognition with a reservation can provide evidence to be weighed in combination with the specific evidence that is present, it is not a substitute for direct evidence concerning community and political processes. In the historical Eastern Pequot case, the continuous state recognition provided evidence which, when added to the specific evidence for community and political processes, provided the basis for criteria 83.7(b) and 83.7(c) to be met for some limited time periods for which the specific evidence itself was insufficient. Because of the narrower quality of the state relationship with the Schaghticoke petitioner, the state relationship provides a more limited amount of additional evidence than it did in the case of the historical Eastern Pequot, especially with regard to demonstrating criterion 83.7(c), consistent with the reasoning in that final determination.

From 1900 onwards, the Schaghticoke petitioner and its antecedents have been regularly identified as an American Indian entity in Federal and State documents, by local historians, by academic scholars, and in newspaper articles. Federal identifications include the special Indian Population schedules for the 1900 and 1910 Federal censuses, the 1934 Tantaquidgeon Report on New England Indians prepared for the U.S. Indian Service, and the 1947 Gilbert report on surviving Eastern Indian groups prepared for the Smithsonian Institution. The State relationship, which has been uninterrupted from 1900 to the present, generated large quantities of documentation in each decade. These documents include legislative acts, legislative appropriations, appointment of overseers, minutes and correspondence of State agencies, and the assignment of a seat on the Connecticut Indian Affairs Council (CIAC) to the Schaghticoke. Identifications by academic scholars during the 20th century begin with a 1903 visit to the Schaghticoke reservation by ethnographer Frank G. Speck, and exist for each decade from the 1960's through the 1990's. Identifications by local historians also appear consistently in the 20th century, with publications from 1903 through the 1990's. Multiple newspaper articles appeared in every decade from 1900 to the present.

There is no question that the many identifications, which fall under multiple categories of the types of evidence that may be used under criterion 83.7(a), pertain to the petitioner and its antecedents. The petitioner meets criterion 83.7(a).

The evidence indicates that the settlement at Schaghticoke developed primarily as an amalgamation of the Weantinock and Potatuck Indian tribes which existed at the time of first sustained contact with non-Indian settlers. Section 83.6(f) of the regulations provides that the criteria in 83.7(a) through (g) shall be interpreted as applying to tribes or groups that have historically combined and functioned as a single autonomous political entity. The combination of Indians from two or more related settlements into a single group under the pressure of non-Indian settlement does not mean that a petitioner fails to meet criterion 83.7(b) or 83.7(c) during the colonial period.

The Colony of Connecticut reserved lands for the Schaghticoke in 1736 and confirmed the reservation in 1752, appointing an overseer in 1757. Throughout the period from 1743 through 1771, the Moravian mission records, which are both descriptive and genealogical, provide sufficient evidence of a Schaghticoke community—more than has existed for the colonial period in some prior decisions. From 1771 through 1801, the evidence for community is less ample, consisting primarily of the continued existence of a distinct residential settlement, the presentation of petitions by the group to the Colony and State, and a detailed external enumeration of all members by name and age in 1789. The majority of the residents during this period descended from the already closely-related Indians who resided at Schaghticoke during the Moravian era. On the basis of precedent, the evidence is sufficient. The petitioner meets criterion 83.7(b) during the colonial and early Federal periods.

For the period from 1800 through 1860, in addition to the data provided by the overseers who were appointed by the State of Connecticut through the Litchfield County Superior Court and the applicable data from the Federal census records, there continued to be a settlement identified and described by outside observers. The existence of a distinct geographical settlement to which off-reservation residents frequently returned and the close kinship relations between the resident and the non-resident members, in combination with the other evidence, provide sufficient evidence of community to meet criterion 83.7(b) from 1801 through 1860.

Throughout the period from 1861 through 1899, the existence of a residential settlement on the Schaghticoke reservation continued to be described by outside observers and identified by the State's overseers, appointed through the Litchfield County Superior Court or after 1883, the Litchfield County Court of Common Pleas. The Schaghticoke who resided off the reservation during this period, as documented through genealogical and census records, had close kin ties to those families that remained on the reservation. The combination of these forms of evidence is sufficient for the petitioner to meet criterion 83.7(b) for the period 1861–1899.

The Schaghticoke group meets criterion 83.7(b) in 1900, based on the existence of the small geographically distinct community (on the reservation),

whose members maintained social relations with each other, and evidence that at that point in time the kinsmen of the residents living nearby in the region were maintaining contact with the reservation residents. The existence of a geographically distinct community is evidence to demonstrate community, when used in combination with other evidence, even where it does not reach the 50 percent of the membership necessary to be sufficient in itself under section 83.7(b)(2)(i).

Supportive evidence for community after 1900, up until 1996, is that the ''membership,'' in the sense of who was involved, came to meetings, was mentioned in interviews and the like, was only a limited portion of the total number of Schaghticoke descendants. At least from the mid-1800's onwards, only certain descendants maintained contact with each other and the reservation. In each generation, only some of a given set of siblings had descendants who appeared on subsequent lists and in descriptions of the Schaghticoke. This selectivity provides evidence of social cohesion among this portion of the descendants of earlier Schaghticokes, and evidence that the Schaghticoke were not a group based on descent alone.

Three family lines had emerged as distinct lines by the beginning of the 20th century, Cogswell, Kilson and Harris. With one important exception, there were no marriages between these lines after the mid 19th century although there were kinship links to each other from intermarriages earlier in the 19th century or in the 18th century.

There is sufficient evidence from 1900 to 1940 to demonstrate that criterion 83.7(b) is met. The primary bases are the reservation community, which encompassed the three main family lines, and the extant kinship ties with others living nearby. Many of these off reservation individuals were former reservation residents whose residence nearby continued the 19th century Schaghticoke pattern where the community was centered on but not limited to the reservation. Additional evidence for community is that the Schaghticoke have not been a descent group up until 1996, but have only included individuals who were maintaining social relations. Although the direct evidence concerning community after 1920 is limited, the continuous state recognition with a reservation provides additional evidence for community, which, when added to the specific evidence in the record, is sufficient to demonstrate that criterion 83.7(b) is met between 1900 and 1940.

The available interview data provides conflicting evidence concerning social community, especially visiting across family lines, from the late 1930's into the 1960's. Some of the data from interviews does not show social relations extending beyond immediate family groups or includes statements which specifically deny contacts across family lines. Evidence from other interview accounts suggests broader contacts, including some social gatherings and visiting of reservation residents across family lines. There was conflicting evidence from interviews concerning the maintenance of broad social contacts after 1940 to 1967. Descriptions of the initial meetings of the Schaghticoke organization created in 1967 indicated that the participants were not well acquainted with each other at that time.

There is not sufficient evidence to demonstrate that criterion 83.7(b) is met between 1940 and 1967. The conflicting data from the 1930's into the 1960's cannot be resolved with the presently available sources and the analysis conducted by the petitioner or by the Department. The present analysis of this data was sufficient to conclude that the petitioner's claims to have demonstrated community in from 1940 to 1967 were not established. The evidence also did not demonstrate that the third party comments that community did not exist in this time period were valid. State recognition does not provide sufficient additional evidence for the period between 1940 and 1967 because of the conflicting nature of the specific evidence for that period.

As evidence to demonstrate community from 1967 to the present-day, the petitioner's reports describe the holding of political meetings, the practice of traditional crafts, the current geographic settlement pattern, work parties on the reservation, and the continued existence of social networks. The formal political meetings do not in themselves show significant social contact or a political relationship because any kind of organization can hold meetings. The petitioner presented only limited evidence to substantiate the present existence of social networks outside of family sublines. The evidence in the record does not show that work parties have been frequent or that they drew broadly from the membership. There was no showing that the practice of crafts represented a distinct cultural tradition or that it involved more than a few individuals. The geographic distribution of the membership is not so broad as to provide evidence against the existence of community, but neither does it provide significant evidence for community.

The Schaghticoke Tribal Nation meets the requirements of criterion 83.7(b) from 1967 to 1996. The primary body of evidence for community is in the data which describe the intense patterns of political conflict in these years, described under criterion 83.7(c). This information demonstrates frequent mobilization of most of the membership, most often along the lines of the major families or their subdivisions. Evidence for criterion 83.7(c) can be used as well for criterion 83.7(b), where that evidence describes circumstances that indicate that social communication is occurring and that social ties exist which influence the patterns of political conflict.

The evidence from political events, membership definition and other sources provides sufficient direct evidence to demonstrate that criterion 83.7(c) is met between 1967 and 1996. Additional, supporting evidence, is the selective nature of the membership of the STN in this period, as well as the preceding decades. State recognition provides additional evidence for community between 1967 and 1996.

The present-day community, as defined by the 2001 STN membership list, does not meet the requirements of criterion 83.7(b). The community so defined differs substantially from the community described for period from 1967 to approximately 1996. Important segments of the group as it existed prior to 1996 have resigned membership in the petitioner or do not appear on the current membership list because they declined, for internal political reasons, to participate in the enrollment process which led to the current STN list. There are approximately 60 such individuals, compared with the present STN membership of 317. The absence of these individuals, who were a part of the social and political relations within the group between 1967 to 1996, means that the current petitioner, as defined by its most recent enrollment, is substantially less than the entire community. In the Department's final determination to acknowledge the Eastern Pequot and the Paucatuck Eastern Pequot petitioners as a single tribe, the historical Eastern Pequot, the Department concluded that it did not have the authority to acknowledge petitioners which were parts of unrecognized tribes.

Criterion 83.7(b) for the present-day community is also not shown because substantial numbers of descendants of one subline of the Kilson family were enrolled for the first time beginning in 1996. There is little evidence of their

association with the rest of the Schaghticoke families, including other Kilsons, after the early 1900's. They constitute 110 of the 317 who are presently enrolled in the STN, more than a third of the total STN membership.

State recognition does not provide sufficient additional evidence for criterion 83.7(b) to be met from 1996 to the present, because of the substantial questions concerning the composition of the community as defined by the current STN membership list.

The evidence available for this finding indicates that the Schaghticoke meet criterion 83.7(c) during the colonial period and during the early Federal period, to 1801. The actions of the local authorities in regard to the tribe were in accordance with the existing Connecticut statutes. On the basis of precedent, governance of an American Indian group by a colony or state does not negate the existence of tribal autonomy within the meaning of the 25 CFR part 83 regulations, which only require autonomy in relation to other Indian entities.

In regard to 18th century political authority, the Schaghticoke settlement developed between the 1720's and 1740's, primarily from the Weantinock and Potatuck tribes that existed at the time of first sustained contact with non-Indian settlers. When the Moravian missionaries first arrived at Schaghticoke (which they called Pachgatgoch) on January 26, 1743, Martin Mack and his wife ''were lodg'd by Captain Mawessman * * *.'' This leader, who was baptized with the name of Gideon later the same year, is generally known as Gideon Mauwee and continued to head the settlement until his death in 1760, when he was succeeded by his son, Josua Job Mauwee, until the latter's death in 1771. Throughout the period from 1743 through 1801, the sequence of Schaghticoke petitions to the colony, with their content focused upon preservation of the land base, and with a substantially stable sequence of signers that changed only gradually over the course of time as the older men died and younger ones became household heads, provides sufficient evidence of the existence of political authority or influence within the group for the colonial and early Federal period.

For the period from 1801 to 1860, there is no evidence in the record pertaining to political authority or influence. There are no leaders named either by outside observers or in internal documents. The State or the overseer did not deal with leaders. The evidence available for the proposed finding does not show that the group submitted any petitions to the State authorities. While a single man served as overseer from 1801 to 1852, thus reducing the number of occasions for petitions, the evidence submitted did not include any data showing that the group expressed its views or was consulted with regard to the 1852 or 1861 overseer appointment. Although, in a certain sense, Eunice Mauwee represented the group to outsiders through the interviews that she granted, there is no evidence that she did so in ''matters of consequence,'' as required under the definition of political influence in the regulations. Although the overseers' records and descriptions by outside observers reflect the existence of a continuing geographical community which maintained continuing ties with non-resident relatives, many of whom received disbursements from the tribal fund when in need, the record provides no data beyond the fact of this continuous existence and descriptions of a few selected members. There is no direct information in regard to political process.

The state relationship by itself does not provide sufficient additional evidence to meet criterion 83.7(c) in the absence of other, specific evidence of political influence. The regulations state at section 83.6.(d) that: ''a petitioner may also be denied if there is insufficient evidence that it meets one or more of the criteria.'' The petitioner does not meet criterion 83.7(c) from 1801 through 1860.

There is very limited evidence for political authority or influence under criterion 83.7(c) in the period from 1861 through 1899 in the form of two petitions, submitted in 1876 and 1884, each of which was signed by more than half of the Schaghticoke's adult members. The evidence does not show that there were petitions submitted in connection with the overseers' appointments of 1865 and 1870 or that the State authorities consulted with the group in making them. By themselves, these two documents within a period of 40 years do not provide sufficient evidence to support a finding that the petitioner meets criterion 83.7(c) for this full period.

The two petitions, in combination with the continuous state relationship since colonial times and the continuous existence of the reservation lands held in trust by the State, with oversight function, show that the Schaghticoke meet criterion 83.7(c) for the period from 1876 through 1884. The state relationship here provides additional evidence because in this period there was a specific political dealing with the group in that the Litchfield County Superior Court and Court of Common Pleas did act in response to the petitions. Additional evidence for criterion 83.7(c) in this period is provided by the demonstration that the Schaghticoke have shown community under § 83.7(b)(1) at more than a minimal level. Under § 83.7(c)(1)(iv), this provides supporting evidence for demonstrating criterion 83.7(c). The evidence does not demonstrate that the Schaghticoke meet criterion 83.7(c) from 1861 to 1875 or from 1885 to 1899. The state relationship does not provide additional evidence for these dates because there is an absence of specific evidence of the exercise of political influence within the group within the meaning of the acknowledgment regulations.

There is almost no specific evidence of Schaghticoke political activity from 1900 to 1949. The evidence available for the proposed finding does not show that the group submitted a petition in connection with the overseers' appointments of 1904–1905, 1914, or 1932, or that State authorities consulted with the group in making these appointments. The several accounts of the Schaghticoke around the turn of the century, including one by ethnographer Frank Speck, do not name anyone as a leader. Though they describe some individuals who were well known to non-Indians for various reasons, the accounts do not identify them as leaders. There was no significant evidence from documents or interviews to support the petitioner's position that James Harris (died 1909) and George Cogswell (died 1923) were leaders. Although they were well known, none of the contemporary descriptions of their activities described roles as leaders of the Schaghticoke or provided substantial evidence that they exercised political influence or carried out activities which meet the definition of political influence in § 83.1 of the regulations.

There is no good evidence to support the petitioner's statements that Howard Nelson Harris was chief from approximately 1920 until 1954, when he was appointed to that position by the Schaghticoke council initiated by Franklin Bearce in 1949. Interview data from the Harris family itself did not provide any significant evidence that he was a leader before 1954, and little specific evidence to demonstrate he exercised political influence from 1954 until his death in 1967. Some Schaghticoke, from a different family line than Harris, specifically denied that he was chief at all, and stated that different individuals, with the title of

Sagamore, were chief from the 1930's until 1967. Evidence of Howard Harris' contacts with the state in the mid-1920's and in 1950 provided no indication that he was considered to be a leader or that he had presented himself to State officials as a leader.

There was little or no evidence to support the petitioner's claims that various other individuals exercised leadership on the reservation between 1900 and the 1950's or that that various individuals listed by the petitioner as being ''culture keepers,'' from 1900 to the present actually functioned as informal leaders who influenced significant numbers of members.

There are no named Schaghticoke leaders with whom the state dealt between 1900 and 1967. One state report, in 1934, said that there were no leaders recognized by the Schaghticoke. This is evidence which specifically indicates that there were no leaders in the period between 1900 and 1949.

Between approximately 1949 and 1959, there was a council with named officers which pursued a claim before the Indian Claims Commission and attempted to deal with the State on the issue of providing more housing on the reservation. This council came about through the efforts of Franklin Bearce, a non-Schaghticoke. There is not good evidence that those holding office in this time period had a following or significant duties for any extended period of time. There is some evidence to indicate that Bearce consulted regularly with various Schaghticoke individuals, including especially Howard Harris, and that his efforts tapped into an existing set of issues and relationships, but the present evidence is insufficient to demonstrate that criterion 83.7(c) is met for this period. It was not shown that the claims issue itself, involving losses that had occurred over a hundred years before, was of importance to the membership in general and thus evidence for criterion 83.7(c) under § 83.7(c)(1)(ii).

There is either no direct evidence to show political influence, or only a small amount of direct evidence, between 1900 and 1967. State recognition in the form it takes in relation to the Schaghticoke does not provide enough additional evidence which, added to the limited specific evidence in the record, demonstrates that criterion 83.7(c) is met for that time period.

From 1967, until approximately 1996, there is substantial evidence of political involvement of much or most of the Schaghticoke membership. There was a continuing series of conflicts that showed consistently broad involvement of members of the group. The several family line groups and sublines have formed a framework for political conflict, as the units which have mobilized for and against certain issues, and in support of or against specific leaders. These conflicts occurred multiple times over a period of more than 30 years, showing involvement in political processes by most of the group's members. They indicate that knowledge of issues and events were being communicated within the membership, evidence described in § 83.7(c)(1)(iii), that there was controversy over valued group goals, evidence described in § 83.7(c)(1)(v), and that most of the membership considered the issues acted upon to be of importance, the form of evidence described in § 83.7(c)(1)(ii). Overall, there is sufficient evidence to demonstrate that the petitioner meets the requirements of criterion 83.7(c) from 1967 to approximately 1996.

The STN does not meet the requirements of criterion 83.7(c) from approximately 1996 to the present. Changes in the STN's membership starting around 1996 and culminating in the 2001 membership list preclude a finding that political processes continued within the group. Former STN members who are not presently members have a strong history of past involvement in Schaghticoke political processes and are clearly part of the same group. The conclusion of this proposed finding is that in the present-day there continues to be a single Schaghticoke political system encompassing the STN and a substantial number of former members who are not presently members of the STN. Consequently, the present petitioner's membership does not substantially encompass the complete political system. The regulations do not permit acknowledgment of only part of a group. The Secretary does not have the authority to acknowledge parts of tribes.

In addition, there is not evidence to show whether the substantial portion of the currently enrolled STN membership who have only been STN members for a few years are maintaining significant social contact or more than a *pro forma* political relationship with each other or with the rest of the present membership. These descendants comprise a third of the present STN membership.

Because the state relationship here lacks a substantial political component, it does not add substantial evidence concerning political processes. In the absence of any specific, direct evidence of political processes and leadership, the state relationship does not in itself provide sufficient evidence for the Schaghticoke to meet criterion 83.7(c) between 1800 and 1876, 1884 and 1949, and 1960 to 1967. The state relationship does not add sufficient additional evidence to the specific evidence in the record for the period from 1949 to 1959 to demonstrate that criterion 83.7(c) is met for that time period.

The Schaghticoke Tribal Nation does not meet the requirements of criterion 83.7(c) from 1800 to 1875, from 1885 to 1967, and in the present-day group. Therefore the petitioner does not meet the requirements of criterion 83.7(c).

The petitioner submitted ample evidence to demonstrate that 100 percent of its membership descends from the historical Schaghticoke tribe. All persons on the petitioner's current membership list, dated August 30, 2001, descend from Indians who were identified as Schaghticoke Indians by the State of Connecticut in the 19th century. The petitioner's continuity of descent has been maintained through three families: Cogswell, Kilson and Harris, who, along with their collateral relatives, were named as Schaghticoke Indians throughout the 19th century overseers' reports. Everyone on the petitioner's current membership list descends from at least one of the Schaghticoke Indians who signed an 1884 petition for a new overseer.

The Federal census records from 1870 to 1910, including the 1900 and 1910 separate Indian Population Schedules, show that the petitioner's direct ancestors lived on the reservation at least during some part of their lives, although some periodically moved off to seek employment elsewhere.

The petitioner has provided a copy of its current membership list, dated August 30, 2001, and certified by its governing body, by a letter dated October 14, 2002, as well as previous membership lists.

The petitioner claims two sources for determining eligibility for membership: (1) Descent from Gideon Mauwee (ca. 1687 to 1760), which is apparently based on long-standing Schaghticoke traditions of the relationships between Gideon's granddaughter Eunice Mauwee (who died in 1860), Parmelia (Mauwee) Kilson, Abigail (Mauwee) Harris, and Truman Bradley a.k.a. Truman Mauwee. However, the records of the late 18th century and early 19th century do not show the exact genealogical connection among these Schaghticoke Indians; or (2) descent from ''any person identified on the 1910 U.S. Federal Census as a Schaghticoke Indian.'' This definition of eligibility contains a slight terminological problem, in that, although the reservation was identified as Schaghticoke in 1910, its residents were identified as ''Pequot.''

Nonetheless, all of the petitioner's 317 current members, have satisfied the petitioner's own criteria for membership: 202 have a direct ancestor listed on the 1910 census of the Schaghticoke reservation, and the remaining 115 individuals descend from Joseph D. Kilson (110) or from Julia M. Kilson (and her husband Truman Bradley) (5), who descend from the Parmelia (Mauwee) Kilson, and thus by tradition from Gideon Mauwee.

More importantly, the petitioner's descent from Schaghticoke Indians of the early 1800's, as identified by the State records, is well documented. While the exact ''blood-line'' connections to the previous generations in the 1700's are less sure, there is more than enough evidence to show the reasonable likelihood of the connection as well. Therefore, based on the evidence available at this time, the petitioner has demonstrated that it descends from the historical Schaghticoke tribe as identified by the State in the early 1800's and therefore meets the requirements of criterion 83.7(e).

The petitioner meets the requirements of criterion 83.7(d) because it has submitted a governing document, including a description of its membership criteria, criterion 83.7(f) because its members are not enrolled with federally recognized tribes, and criterion 83.7(g) because the group or its members have not been the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship.

The evidence available for this proposed finding demonstrates that the Schaghticoke Tribal Nation does not meet all seven criteria required for Federal acknowledgment. In accordance with the regulations, failure to meet any one of the seven criteria requires a determination that the group does not exist as an Indian tribe within the meaning of Federal law (83.6(c), 83.10(m)).

A copy of this proposed finding, which summarizes the evidence, reasoning, and analyses that are the basis for decision is available upon written request (83.10(h)).

During the comment period, the Assistant Secretary shall provide technical advice concerning the proposed finding (83.10(j)(i)). Under the court-approved agreement any interested party, including any parties or amici curiae to the litigation, who wishes to request a formal on-the-record technical assistance meeting under 25 CFR 83.10(j)(2), must make their request not later than 30 days after service of the proposed finding. A formal technical assistance meeting will be held within 60 days of the first such request. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and will become part of the record considered by the Assistant Secretary in reaching a final determination (83.10(j)(2)).

Parties to the litigation have six months from the service of the proposed finding to provide comments, documents and arguments on the proposed finding to the Department. Interested and informed parties who are not also parties to the litigation have 180 days from the date of publication of this notice in the **Federal Register** to provide comments to the Department. Comments on the proposed finding should be submitted in writing to the Office of the Assistant Secretary—Indian Affairs, 1849 C Street, NW., Washington, DC 20240, Attention: Branch of Acknowledgment and Research, Mail Stop 4660–MIB. The petitioner and all interested and informed parties commenting on the proposed finding must provide copies of their comments to all parties and amici curiae to the litigation at the same time. The addresses of the petitioners, parties and amici curiae are available from the Department upon request.

The petitioner shall file any reply to these comments with the Department within 30 days of the close of the comment period. After consideration of the written arguments and evidence submitted during the comment period and the petitioner's response to the comments, the AS–IA will make a final determination regarding the petitioner's status within four months of the end of the petitioner's reply period and publish notice of this final determination in the **Federal Register**.

Dated: December 5, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–31229 Filed 12–6–02; 3:18 pm]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP03–0032]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plat of survey of the following described lands is scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 9 S., R. 13 E., accepted November 15, 2002

A copy of the plat may be obtained from the Oregon State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest.

For further information contact: Bureau of Land Management (333 S.W. 1st Avenue), P.O. Box 2965, Portland, Oregon 97208.

Dated: November 20, 2002.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 02–31192 Filed 12–10–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska OCS Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of the draft environmental impact statement (EIS) for proposed oil and gas lease sales in Cook Inlet, Alaska.

SUMMARY: MMS announces the availability of the draft EIS prepared by MMS for proposed OCS Lease Sales 191 and 199 offshore Cook Inlet, Alaska.

DATES: Comments on the draft EIS are due February 11, 2003. Public hearings will be held in Alaska: Anchorage, January 16, 2003; Seldovia, January 21; Homer, January 23; Soldotna/Kenai, January 24; telephone call-in to MMS Anchorage, January 28.

SUPPLEMENTARY INFORMATION: This draft EIS assesses two sales in the Proposed Final 2002–2007 5-Year Oil and Gas Leasing Program for the Cook Inlet OCS Planning Area. Sale 191 is scheduled for 2004 and Sale 199 for 2006. Federal Regulations (40 CFR 1502.4) suggest analyzing similar or like proposals in a single EIS. The proposal analyzed for each sale is to offer 517 whole or partial lease blocks in the Cook Inlet OCS Planning Area, covering about 2.5 million acres (about 1 million hectares). The proposed sale area is seaward of the State of Alaska submerged lands boundary, extending from 3 miles to

approximately 30 miles offshore and to water depths more than 650 feet. It extends from below Kalgin Island south to approximately Shuyak Island.

EIS availability: Persons interested in reviewing the draft EIS ''OCS EIS/EA, MMS 2002–065'' (Volumes I and II) can contact the MMS Alaska OCS Regional Office. The documents are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Resource Center, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508–4363, telephone: (907) 271–6070 or (907) 271–6621 or toll free at 1–800–764–2627. Requests may also be sent to MMS at *akwebmaster@mms.gov.* You may obtain single copies of the draft EIS, the Executive Summary, or a CD/ROM version, from the same address. You may also look at copies of the draft EIS in the following libraries:

Alaska Pacific University, Academic Support Center Library, 4101 University Drive, Anchorage, Alaska;
Alaska Resources Library and Information Service (ARLIS), U.S. Department of the Interior, 3150 C Street, Suite 100, Anchorage, Alaska;
Alaska State Library, Government Publications, State Office Building, 333 Willoughby, Juneau, Alaska;
Anchor Point Public Library, 73405 Milo Fitz Avenue, Anchor Point, Alaska;
Canadian Joint Secretariat Librarian, Inuvikon NT, Canada;
Chiniak Public Library, 42650 Chiniak Highway, Chiniak, Alaska;
Department of Indian and Northern Affairs, Yellowknife, NT, Canada;
Fairbanks North Star Borough, Noel Wien Library, 1215 Cowles Street, Fairbanks, Alaska;
Homer Public Library, 141 West Pioneer Avenue, Homer, Alaska;
Jessie Wakefield Memorial Library, 207 Spruce Drive, Port Lions, Alaska;
Johnson Memorial Library, 319 Lower Mill Bay Road, Kodiak, Alaska;
Juneau Public Library, 292 Marine Way, Juneau, Alaska;
Kachemak Bay Campus Library, 533 Pioneer Avenue, Homer, Alaska;
Kasilof Public Library, Mile 110 Sterling Highway, Kasilof, Alaska;
Kenai Community Library, 163 Main Street Loop, Kenai, Alaska;
Kenai Peninsula College Library, 34820 College Drive, Soldotna, Alaska;
Kodiak College Library, 117 Benny Benson Drive, Kodiak, Alaska;
Ninilchik Community Library, 15850 Sterling Highway, Ninilchik, Alaska;
North Slope Borough School District, Library/Media Center, Barrow, Alaska;
Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska;
Old Harbor Library, Three Saints Avenue, Old Harbor, Alaska;
Ouzinkie Tribal Media Center, 110 Third Street, Ouzinkie, Alaska;
Seldovia Public Library, 260 Seldovia Street, Seldovia, Alaska;
Soldotna Public Library, 235 Binkley Street, Soldotna, Alaska;
U.S. Army Corps of Engineers Library, U.S. Department of Defense, Elmendorf Air Force Base, Anchorage, Alaska;
U.S. Environmental Protection Agency, Region 10 Library, 1200 6th Avenue, OMP–104, Seattle, Washington;
U.S. Fish and Wildlife Service Library, 1011 East Tudor Road, Anchorage, Alaska;
University of Alaska Anchorage, Consortium Library, 3211 Providence Drive, Anchorage, Alaska;
University of Alaska Fairbanks, Elmer E. Rasmuson Library, Government Documents, 310 Tanana Drive, Fairbanks, Alaska;
University of Alaska Fairbanks, Geophysical Institute, Government Documents, Fairbanks, Alaska;
University of Alaska Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska;
University of Alaska, Southeast, 11120 Glacier Highway, Juneau, Alaska;
Valdez Consortium Library, 200 Fairbanks Street, Valdez, Alaska;
Z.J. Loussac Library, 3600 Denali Street, Anchorage, Alaska.

Public Hearings: Public hearings will be held to receive comments on the draft EIS. The hearings will provide us with additional information that will help in evaluating the potential effects of the proposed leasing program. Hearings will be held in Anchorage, Seldovia, Homer, and Kenai/Soldotna, and by telephone on the following dates and times:

Anchorage, Alaska—January 16, 2003, Minerals Management Service, Conference Room, 949 East 36th Avenue, 3rd Floor, 4 p.m. to 6:30 p.m.;
Seldovia, Alaska—January 21, 2003, Seldovia Community Center Multi-Purpose Room, 260 Seldovia Street, 7 p.m. to 9 p.m.;
Homer, Alaska—January 23, 2003, Homer City Council Chambers, 491 East Pioneer Way, 7 p.m. to 9 p.m.;
Soldonta/Kenai, Alaska—January 24, 2003, Merit Inn Banquet Room, South Willow Street, 7 p.m. to 9 p.m.
By telephone—January 28, 2003, 4:30 p.m. to 6:30 p.m., toll free 1–800–764–2627.

Village residents who are not able to attend one of the four on-site public meetings are especially encouraged to submit comments by telephone.

If you wish to testify at a hearing, you may register prior to the hearing to schedule a preferred time by contacting the Alaska OCS Region at the above address or Dr. James Lima at (907) 271–6690 or toll free 1–800–764–2627 not later than 5 days prior to the hearing date. Every effort will be made to accommodate individuals who have not pre-registered to testify. Time limitations may make it necessary to limit the length of oral statements to 10 minutes. You may supplement an oral statement with a more complete written statement and submit it to a hearing official at the hearing or by mail until February 11, 2003. Each hearing will recess when all speakers have had an opportunity to testify. If after the recess, no additional speakers appear, we will adjourn the hearing. Written statements submitted at a hearing will be considered part of the hearing record. If you are unable to attend the hearing, or if you prefer, you may submit written statements at the address below.

Written Comments: The MMS requests interested parties to submit their written comments on this draft EIS to the Regional Director, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99509–4663 or by electronic mail to *AKEIS@MMS.GOV.* Our practice is to make comments, including names and home addresses of respondents available for public review. An individual commenter may ask that we withhold their name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission. We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations or businesses or by individuals identifying themselves as representatives or organizations or businesses. The comment period ends on February 11, 2003.

Dated: November 6, 2002.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

Approved: November 12, 2002.

Willie R. Taylor,

Director, Office of Environmental, Policy and Compliance.

[FR Doc. 02–31185 Filed 12–10–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub.L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (the AMWG), a technical work group (the TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

Date and Location: The Glen Canyon Dam Technical Work Group will conduct the following conference call:

December 20, 2002. The conference call will begin at 8:00 AM and conclude at 9:00 AM (Mountain time).

Agenda: The purpose of the conference call is to poll the members on two specific motions:

(1) Recommend to the AMWG the specific line item details of the FY 2004 budget, and

(2) Recommend to the AMWG the non-native fish control report prepared by the Non-Native Fish Control Ad Hoc Group.

If there are any members of the public who would like to provide written comments for the TWG to consider, they should provide those to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3758; faxogram (801) 524–3858; e-mail at *rpeterson@uc.usbr.gov* at least five (5) days prior to the conference call. All comments received will be provided to the TWG members. Copies of the budget and non-native fish documents are available at the following Web site: *http://www.uc.usbr.gov/amp/twg/02dec20/mtgt_3_00.html.*

To register for the conference call, please contact Linda Whetton at (801) 524–3880 at least two (2) days prior to the call. You will be given the phone number and password at that time.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; or via e-mail at *rpeterson@uc.usbr.gov.*

Dated: November 25, 2002.

Randall V. Peterson,

Manager, Adaptive Management and Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 02–31170 Filed 12–10–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of *De Minimis* Consent Decrees Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on November 26, 2002, two proposed *de minimis* consent decrees (''consent decrees'') in *United States* v. *Abb, Inc., et al.,* Civil Action No. AMD02CV3858 were lodged with the United States District Court for the District of Maryland. One is a global *de minimis* consent decree for all settlors except Northrup Grumman Corporation (''global *de minimis* consent decree''). The other is the consent decree concluded with Northrup Grumman Corporation.

In this action the United States sought cost recovery for costs incurred in connection with the Spectron, Inc. Superfund Site, located near Elkton, Maryland (the ''Site''). Under the terms of the consent decrees, the proposed settling parties, 477 potentially responsible parties and 15 federal agencies, would pay approximately $2.68 million to EPA to cover past and future response costs. All of the settling defendants contributed minor amounts of waste containing hazardous substances to the Site. Each party's payment to EPA consists of its proportional share of EPA's past costs ($1,108,922) and estimated future costs ($16,880,301), with a 100% premium on the estimated future costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* Ev. *Abb, Inc., et al,* Civil Action No. AMD02CV3858, D.J. Ref. 90–11–2–482.

The consent decrees may be examined at the Office of the United States Attorney, 101 West Lombard Street, Baltimore, Maryland 21201, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029. A copy of either consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy of either the global *de minimi* consent decree or the Northrup Grumman consent decree, minus appendices, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury. The appendices to both consent decrees are identical. In requesting the appendices, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost).

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–31245 Filed 12–10–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'')

Under 28 CFR 50.7, the United States hereby give notice that on November 14, 2002, a proposed Consent Decree (''Decree'') in *United States of America* v. *Kennecott Holdings Corporation, (formerly Kennecott Corporation) and Kennecott Utah Copper Corporation,* Civil Action No. 2:02–CV–1228 (DAK) was lodged with the United States District Court for the District of Utah, Central Division.

In this action the United States sought to resolve claims against Kennecott under sections 106 and 107 of CERCLA concerning mining-related surface contamination of soils and sediments in three operable units (''OUs'') of the ''Kennecott South Zone Site'' located in the southwest portion of Salt Lake County, Utah. The Decree requires Kennecott to perform certain operation and maintenance activities concerning two of the OUs, and to reimburse EPA $307,545.64.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should

be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Kennecott Holdings Corp. et al.,* D.J. Ref. 90–11–2–07195/1.

The Decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah 84111, and at U.S. EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation no. (202) 514–1457. In requesting a complete copy of the decree with exhibits, please enclose a check in the amount of $17.00 (68 pages at 25 cents per page reproduction cost) or for a copy of the decree only, please enclose a check in the amount of $7.00 (28 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–31246 Filed 12–10–02; 8:45 am]

BILLING CODE 4416–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Trident Seafoods Corporation*, Civil Action No. A02–281 CV (RRB), was lodged with the United States District Court for the District of Alaska on November 13, 2002.

This Consent Decree resolves claims brought by the United States against Trident Seafoods Corporation (''Trident'') for its unauthorized and illegal discharges of pollutants into Tongass Narrows and Akutan Harbor from its seafood processing facilities in Ketchikan and Akutan, Alaska, in violation of section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), and for violations of certain effluent limitations and other conditions established in a general National Pollutant Discharge Elimination System (''NPDES'') permit issued by the EPA under section 402(a) of the CWA, 33 U.S.C. 1342(a).

The proposed Consent Decree requires Trident to (1) remediate its underwater waste piles, which result from Trident's discharges of seafood processing wastes from its Ketchikan Facility and cover more than three acres of the sea floor; (2) eliminate all of its discharges of seafood processing wastes into the Tongass Narrows for a period of three years; (3) implement improved operation and maintenance measures at its Ketchikan Facility to ensure compliance with numerous effluent limitations; (4) pay a civil penalty in the amount of $96,000.00; and (5) conduct a supplemental environmental project (''SEP'') involving an economic study evaluating treatment alternatives for its seafood processing wastes.

The Department of Justice will receive written comments on the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Trident Seafoods Corporation*, D.J. Ref. 90–5–1–1–2002/1.

The Consent Decree may be examined at the Office of the United States Attorney, District of Alaska, Federal Building & United States Courthouse, 222 West 7th Avenue, Room 253, Anchorage, Alaska, 99513–7567, and at U.S. Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''U.S. Treasury'' in the amount of $8.25, and please reference *United States* v. *Trident Seafoods Corporation*, D.J. Ref. 90–5–1–1–2002/1.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–31244 Filed 12–10–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Minakshi B. Deshmukh, M.D., Revocation of Registration, Denial of Application

On July 11, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Minakshi B. Deshmukh, M.D. (Dr. Deshmukh) of Midland, Michigan, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, BD4361692 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f). The Order to Show cause alleged that Dr. Deshmukh was not authorized to handle controlled substances in the States of Michigan (where she has applied for a new DEA registration) or Ohio (the state in which she is currently registered). The Order to Show Cause also notified Dr. Deshmukh that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Deshmukh at a location in Midland, Michigan, and DEA received a signed receipt indicating that it was received on July 17, 2002. DEA has not received a request for hearing or any other reply from Dr. Deshmukh or anyone purporting to represent her in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing have been received, concludes that Dr. Deshmukh is deemed to have waived her hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Deshmukh currently holds DEA Certificate of Registration BD4361692, as a practitioner. Her current registered location is in Oregon, Ohio and that registration expires on June 30, 2004. Only June 5, 2001, Dr. Deshmukh submitted an application for a new DEA Certificate of Registration as a practitioner at a location in Midland, Michigan.

A review of the investigative file reveals that on June 5, 2001, the Michigan Board of Medicine (Michigan Board) entered an Order of Summary Suspension of Dr. Deshmukh's license to practice medicine in that state. Following the issuance of the above Order, and effective March 20, 2002, Mr. Deshmukh and the Michigan Board entered into a Consent Order. The terms of the Consent Order included the six-month suspension of Dr. Deshmukh's license to practice medicine, and as a condition of reinstatement, her agreement to submit to a psychological and psychiatric examination, as well as a neurological evaluation.

The investigative file also reveals that in response to the Michigan Board's June 2001 Order of Summary Suspension, and effective August 8, 2001, Dr. Deshmukh and the Ohio Medical Board entered into a Consent Agreement. Among the terms agreed to by the parties was the indefinite suspension of Dr. Deshmukh's medical license in that state.

There is no evidence in the record that Dr. Deshmukh's licenses to practice medicine in Michigan and Ohio have been reinstated. Therefore, the Deputy Administrator finds that since Dr. Deshmukh is not currently authorized to practice medicine in either jurisdiction, it is reasonable to infer that she is not authorized to handle controlled substances in those states.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Joseph Thomas Allevi M.D., 67 FR 35581 (2002); Carla Johnson, M.D., 66 FR 52939 (2001); Graham Travers Schuler, M.D., 65 FR 50570 (2000); Dominick A. Ricci, M.D., 58 FR 51104 (1993), Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Deshmukh is not licensed to handle controlled substances in Michigan and Ohio, the states in which she seeks registration and is currently registered with DEA, respectively. Therefore, she is not entitled to a DEA registration in those states.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BD4361692, issued to Minakshi B. Deshumukh, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that Dr. Deshmukh's pending application for DEA registration dated June 5, 2001, is denied. This order is effective January 23.

Dated: November 20, 2002.

John B. Brown, III

Deputy Administrator.

[FR Doc. 02–31208 Filed 12–10–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

K-Nine Detectives; Denial of Application

On July 16, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to K-Nine Detectives (Respondent), proposing to deny its application, executed on February 14, 2000, for DEA Certificate of Registration as a researcher. The application was submitted on behalf the Respondent by its owner, Shane Kessler (Mr. Kessler). The Order to Show Cause alleged that granting the Respondent's application would be inconsistent with the public interest as that term is used in 21 U.S.C 823(f).

The Order to Show Cause was delivered by certified mail on July 23, 2001, and the Respondent timely requested a hearing. However, after the matter was docketed before Administrative Law Judge Mary Ellen Bittner, and the Government submitted its prehearing statement, the Respondent withdrew its request for hearing. Accordingly, Judge Bittner terminated all proceedings before her and the matter was subsequently transmitted to the Deputy Administrator for Final Agency Decision.

In light of the withdrawal of its request for hearing, the Deputy Administrator finds that the Respondent has waived its hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Mr. Kessler submitted a DEA registration application seeking to register K-Nine Detectives at his home address in Tigard, Oregon. The Respondent sought authorization to handle controlled substances in Schedules I through V as a researcher. Included among the Schedule I controlled substances the Respondent sought to handle were heroin and marijuana. The Respondent also requested authorization to handle Schedule II controlled substances, cocaine, opium, powdered opium and methamphetamine.

Upon submission of Respondent's application, Mr. Kessler informed the DEA field office in Portland, Oregon that he planned to hire himself and his dogs to perform drug searches as schools, factories, and other private premises. DEA learned that Mr. Kessler had no previous experience with training dogs for purposes of drug detection.

In light of his lack of experience in drug-detection, a DEA diversion investigator urged Mr. Kessler to contact local law enforcement authorities to discuss his planned business activities. The investigator also requested that Mr. Kessler determine whether there was a need for such services in his community as well as in other parts of Oregon. DEA subsequently learned from the Tigard Chief of Police and the Sheriff of Washington County (of which the city of Tigard is a part) that both sought to dissuade Mr. Kessler from his planned business venture because there was adequate coverage by law enforcement canine drug teams in the area.

Mr. Kessler also submitted with his registration application the first of three research protocols. In the original protocol, Mr. Kessler reported that he would have on hand up to five lbs. each of heroin, marijuana, cocaine, opium, methamphetamine, and crack cocaine. In a subsequent revised protocol sent to DEA, Mr. Kessler then reduced the drug quantities to ½ lb. of marijuana and ¼ lb. of the remaining substances. In the third protocol, Mr. Kessler again revised the quantities of controlled substances that he would have on hand. On all three protocols, Mr. Kessler stated that his canines would search for drugs and explosives, even though he previously reported that his dogs were trained to detect only drugs and not explosives. In addition, while the Respondent's DEA registration application sought authorization to handle controlled substances in Schedule I through V, the research protocols provided by the Respondent only made mention of drugs in Schedules I and II.

DEA obtained additional information from the Washington County Sheriff's Department and the Drugs and Vice Division of the Portland Police Bureau (which both handle drug-detecting dogs) regarding the need for certifications for drug detecting dogs. DEA was informed that for purposes of court testimony, the handler of a drug-detecting dog would have to show that the dog had passed, at minimum, an annual certification. However, the Oregon Police Canine Association, the primary certifying organization for drug-detecting dogs, does not provide certifications for non-law enforcement dog handlers. The Deputy Administrator finds that the Respondent is not affiliated with any law enforcement entities.

During a regulatory inspection of its proposed registered location on April 24, 2001, DEA learned that the

Respondent does not have any customers for which it will perform searches with dogs. Mr. Kessler also stated that he had not spoken to any business owners about hiring his company to perform drug-detection services. However, he informed DEA investigations that he had spoken to the principal and vice-principal of Century High School in Hillsboro, Oregon about hiring his company to perform drug searches of lockers and the school's personnel seemed receptive to the proposal. Mr. Kessler further informed DEA investigators that he had also approached the vice-principals of Tigard and Beaverton High School about performing drug detection services at their institutions.

Despite Mr. Kessler's representations, DEA investigators subsequently learned from the principal of Century High that the governing board for the entire Hillsboro school district decided against general searches through any of the district's schools through the use of a drug-detecting dog. The principal stated that if circumstances warranted a search, they would utilize the services of drug dogs trained by the Washington County Sheriff's Department. The principal added that this arrangement would not cost the school any additional funds. DEA investigators also learned that Mr. Kessler had never approached the vice-principal of Century High School regarding the use of drug searching dogs.

The Deputy Administrator finds that a DEA investigator also contacted officials from Tigard and Beaverton High Schools. Both schools reported that they had not been approached by Mr. Kessler regarding the use of drug detection dogs. In addition, both institutions had contingency plans in place for drug detection that relied upon the services of city and county law enforcement authorities.

The Deputy Administrator also finds that a DEA investigator consulted with several law enforcement officers with experience in conducting drug searches with canines. One of the persons interviewed was a detective for the Gresham (Oregon) Police Department who was also a Task Force Officer (TFO) for DEA's Airport Task Force and a former President and ''Master Trainer'' of the Oregon Police Canine Association. Upon his review of the quantities of controlled substances the Respondent proposed for use in training, the officer found that there was no rationale for possessing more than 50 grams total of any drug for on-going dog training purposes. The officer concluded that the quantities outlined in the Respondent's Research Protocols far exceeded those required to conduct drug-detection training with canines.

The Deputy Administrator also finds that DEA investigators interviewed individuals from the private sector involved in dog training for drug-detection purposes. The general response from those entities was that there is no demand in the private sector for drug-detection services involving schools and businesses.

The Deputy Administrator also finds that DEA investigators also consulted with the Chief Deputy of the Washington County Sheriff's Office regarding the Respondent's proposed registration with DEA. The Chief Deputy expressed concerns about Respondent's plan to possess controlled substances and conduct training at specified locations such as schools and businesses. Among his concerns was that the Respondent's registered location would be within a few hundred yards of a middle school. The Chief Deputy expressed further concern that introduction of controlled substances in close proximity to a school would pose a health and safety threat to schoolchildren. Finally, the Washington County Sheriff's Office further informed DEA of information received that the District Attorney of Washington County would not prosecute any case where controlled substances had been seized as a result of a search conducted by the Respondent.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

It is clear that granting the Respondent's application for DEA Certificate of Registration would be inconsistent with the public interest. The Respondent has requested authorization to handle controlled substances in Schedules I through V although its research protocols only reference drugs in Schedules I and II. The Deputy Administrator finds that the drugs outlined in the protocols are in quantities far in excess of what is required to conduct research involving canines.

The Deputy Administrator finds that the Respondent seeks to engage in an activity that is not needed in the area in which it seeks registration. The Deputy Administrator also finds that the Washington County Sheriff's Department, the Drugs and Vice Division of the Portland Police Bureau, and other local law enforcement entities have narcotics detection canines of sufficient numbers to service the needs of the law enforcement community, businesses and private citizens. DEA has previously found such factor relevant in denying an application for registration as a researcher. See, *e.g.,* Albanoski, Broughton & Associates International, 57 FR 4646 (1992); K–9 Drug Detection Services of Florida, Inc., 56 FR 5238 (1991).

DEA has also found that grounds exist to deny an application for registration as a researcher where, as in this matter, the applicant lacks relevant experience in training canines for drug detection purposes. Angelos Michalatos d/b/a/ Contraband Searches and Investigation, 54 FR 48161 (1989).

No evidence has been submitted on behalf of the applicant. Therefore, the Deputy Administrator concludes that the Respondent has failed to demonstrate a need for, or the ability to perform, the activity for which it sought registration to handle controlled substances. Based on the above, the Deputy Administrator concludes that the Respondent's registration would be inconsistent with the public interest and therefore, its application for registration must be denied.

Accordingly, the deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for DEA Certificate of Registration as a researcher submitted by Shane Kessler on behalf of K-Nine Detectives be, and it hereby is, denied. This order is effective January 10, 2003.

Dated: November 20, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–31209 Filed 12–10–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Xtreme Enterprises, Inc.: Denial of Request for Registration To Handle List I Chemicals

I. Background

On December 15, 2000, Xtreme Enterprises, Inc., (Respondent) applied to be registered with the Drug Enforcement Administration (DEA) as a distributor of the list I chemical ephedrine. After an investigation by DEA investigators, on April 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause why DEA should not deny Respondent's application. On May 2, 2001, in response to the OSC, Rhonda J. Bryngelson, the owner of Respondent, requested and administrative hearing.

The requested hearing was held in Milwaukee, Wisconsin on November 7, 2001, before Administrative Law Judge Mary Ellen Bittner. At the hearing, each party called witnesses to testify and introduced documentary evidence. After the hearing, each party submitted Proposed Findings of Fact, Conclusions of Law and Argument. On April 3, 2002, the Administrative Law Judge issued her Recommended Rulings, Findings of Fact, Conclusions of Law and Decision, recommending that the Deputy Administrator grant Respondent's application for registration. Neither party filed exceptions to the Administrative Law Judge's Findings.

On May 7, 2002, the Administrative Law Judge certified and transmitted the record to the Deputy Administrator of DEA. The record included the Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, the findings of fact and conclusions of law proposed by all parties, all of the exhibits and affidavits, and the transcript of the hearing sessions.

II. Final Order

The Deputy Administrator does not adopt the Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge. The Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule and final order prescribed by 21 CFR 1316.67 and 21 CFR 1304.46, based upon the following findings of fact and conclusions.

At the hearing, John N. Uncapher, then chief of the Domestic Chemical Control Unit at DEA, credibly testified that the primary objective of his unit is to reduce or curtail the diversion of listed chemicals and other clandestine lab supplies, register applicants if their registration is consistent with the public interest and stop imports of listed chemicals where there is reason to believe that the imports may be diverted to the unlawful manufacture of controlled substances. After the enactment of the Chemical Diversion and Trafficking Act in 1988 (CDTA), the law imposed reporting, record keeping and import/export notification requirements for regulated transactions in controlled chemicals. The law only applied to bulk ephedrine, however. The law excepted single-entity over the counter (OTC) ephedrine products.

Mr. Uncapher also testified that ephedrine has a therapeutic use in both OTC and legend drug products. Ephedrine is lawfully marketed under the Federal Food, Drug and Cosmetic act for OTC use as a bronchodilator used in the treatment of asthma. Ephedrine is also available OTC in combination with other active ingredients. As a legend drug (*i.e.* dispensed pursuant to a physician's order or prescription,) ephedrine is used in injectable form in hospitals as part of an anethesiology kit. Ephedrine has the beneficial effect of increasing low pressure very rapidly in the event of hypotensive crisis.

By the late 1980's traffickers and clandestine lab operators discovered the ease with which ephedrine could be purchased in large quantities and converted to methamphetamine. In 1994, however, the Domestic Chemical Diversion Control Act of 1993 (DCDCA) removed the record keeping and reporting exemption for single entity ephedrine and required registration of distributors, importers and exporters of all ephedrine products and other list I chemicals.

The passage of the DCDCA led to the increased diversion of pseudoephedrine tablets for the illicit production of methamphetamine. This led to the enactment of the Comprehensive Methamphetamine Control Act of 1006 (MCA), which expanded regulatory control of lawfully marketed drug products containing ephedrine, pseudoephedrine, and phenypropanolamine.

Mr. Uncapher also testified that he had reviewed the file concerning Respondent's application. The file revealed that Respondent's owner informed DEA that the Respondent would distribute ephedrine products to entities that are considered part of the ''non-traditional market'' (*i.e.,* gas stations and convenience stores). Mr. Uncapher also testified that one of Respondent's proposed suppliers of ephedrine is Proactive Labs, Inc., a DEA registered distributor of list I chemicals located in Austell, Georgia. On November 9, 1999 and again on January 24, 2001, Proactive Labs was the recipient of warning letters from DEA informing the company that list I chemicals supplied by the firm had been associated with the illicit production of methamphetamine in various parts of the United States. Mr. Uncapher concluded that Respondent's ephedrine products will likely be diverted to illicit use, and the Respondent would therefore become a major source of listed chemicals for illicit traffickers of methamphetamine.

Guy J. Hargreaves testified by written declaration that he is a Special Agent at DEA and has had considerable experience in the investigation of clandestine methamphetamine laboratories. He routinely conducts nationwide methamphetamine and clandestine laboratory safety presentations to civil groups, anti-drug coalitions, and law enforcement groups on safety awareness, chemical hazards, and the latest intelligence in clandestine laboratory investigations. Mr. Hargreaves testified that until the early 1990's, the methamphetamine trade was fragmented into small organizations dominated by outlaw motorcycle gangs. Afterwards, organized methamphetamine traffickers from Mexico began to monopolize the production and delivery of methamphetamine to make an inexpensive and highly abusable product. An expanded population of methamphetamine abusers quickly realized the potential for easily producing methamphetamine for personal or local use by using the ephedrine/pseudoephedrine reduction technique. As a result, the proliferation of smaller laboratories has reached epidemic proportions, on both the west coast and in several Midwestern states. S/A Hargreaves further testified that most drugs in illicit traffic are products of illicit processing or synthesis. In the methamphetamine trade, chemicals are often accumulated and processed by cooks in small scale production labs or by organized crime groups which operate much larger scale clandestine laboratories.

Mr. Hargreaves also testified that clandestine laboratory operators employ a variety of methods to conceal from law enforcement their purchases of

chemicals and equipment. One common technique is to use unwitting individuals or runners to purchase the chemicals or equipment needed for the laboratory. Mr. Hargreaves also explained the four methods most commonly used in the illicit manufacture of methamphetamine. All four of the techniques utilize 1-ephedrine or d-pseudoephedrine as the precursor chemical. Mr Hargreaves further testified that the number of clandestine laboratory seizures has seen a spiraling increase in recent years. DEA participation in methamphetamine lab seizures has increased from 263 in 1994 to more than 2000 in 1999. He also discussed the hazards to DEA officials in dismantling of clandestine laboratories and great expense to DEA in disposing of the hazardous materials often found there. Interviews that Mr. Hargreaves has conducted with numerous narcotics officers across the nation indicate that the vast majority of these laboratories utilized pseudoephedrine and/or ephedrine from tablets and pills, not bulk powder sources.

Douglas A. Snyder, Drug Science officer within the Drug and Chemical Evaluation Section at DEA, credibly testified by declaration that there are 35 chemicals that are regulated under the Controlled Substance Act's chemical control provisions. The major part of DEA's regulatory concern is with the listed chemicals ephedrine, psuedoephedrine and phenylpropanolamine. All three have therapeutic uses in both over the counter and legend drug products. Methamphetamine also has therapeutic uses, but it also has a high abuse potential. Dr. Snyder further testified that the production of methamphetamine from ephedrine or pseudoephedrine tablets can be accomplished via a simple one step reaction and can be accomplished with little or no chemistry expertise. The controlled substances produced from these chemicals, methamphetamine and amphetamine, have a high abuse potential. The public health consequences of the manufacture, trafficking and abuse of these substances are well know and documented.

Nancy Coffey, a staff coordinator in DEA's Office of Diversion Control, credibly testified by declaration that recent studies show that illicit manufacturers of methamphetamine have returned to the use of ephedrine in the manufacturing process. This probably has occurred as a result of DEA's concentration on the diversion of pseudoephedrine. DEA enforcement efforts are designed to combat the distribution by non-traditional establishments of list I chemical products, commonly referred to as ''gray market'' products. The distribution chain for the gray market products most commonly consists of small retail establishments, including, but not limited to, liquor stores, head shops, mini-marts, beauty parlors, convenience stores and video rental stores that purchase and sell ephedrine and pseudoephedrine over-the-counter products in quantities that far exceed what would be necessary to meet legitimate demand. Ms. Coffey concluded that such products will likely be diverted to illicit use, and Respondent could therefore become a major source of listed chemicals for illicit traffickers of methamphetamine.

Mark J. Rubbins testified by declaration that he is a Staff Coordinator in the Domestic Control Unit of DEA. He explained that DEA distinguishes the distribution practices of what is referred to as the ''traditional'' market versus the ''non-traditional'' market. Traditional outlets are typically large chain grocery stores such as Giant, Safeway and Food Lion, or nationally recognized pharmacy chains like Rite Aid, Eckerts and CVS. The traditional products are also sold in larger convenience stores such as 7–11 and Dairy Mart, as well as large retail outlets such as Walmart and K-Mart. Mr. Rubbins further testified that in response to DEA enforcement efforts, more and more traditional firms have discontinued their marketing of 60 mg. pseudoephedrine and similar OTC medications in bottle sizes with a single-active ingredient. The traditional manufacturers have also begun packaging their OTC products in small quantities (*i.e.,* blister packs,) and have maintained a 30 milligram strength for pseudoephedrine products. While even smaller blister packs are increasingly diverted to illicit uses, they are not as attractive to traffickers as OTC products packaged in large bottle sizes, with a single active ingredient. Mr. Rubbins also testified that Respondent would be part of what DEA considers the non-traditional market, in that it is a retail distributor that specializes in the sale of sundry items, not OTC pharmaceutical products. Based upon his review of Respondent's file, it appears that some of Respondent's customers have already requested that the firm carry 25 milligram tablets in 60 count bottles. Mr. Rubbins found this factor significant in that the customers at issue requested the larger packaging that is not normally seen in traditional retail establishments. This led Mr. Rubbins to the conclusion that Respondent plans to market its products to the non-traditional market, and would therefore become a major source of listed chemicals for illicit traffickers of methamphetamine.

Rhonda Bryngelson, Respondent's owner, testified credibly on behalf of the Respondent. She is high school educated, and has not taken any business courses. She has no prior experience handling list I chemicals. Mrs. Bryngelson testified further that she is the sole owner of the Respondent and has been in business since January 2001. Her business is primarily engaged in the sale of various novelty items. She previously worked for her brother-in-law's company Quality Snacks, where she delivered beef jerky for the company. Quality Snacks did not sell ephedrine products. While working for her brother-in-law, Mrs. Bryngelson also made deliveries for Quality Snack's wholesaler, Mid-America. Although she made deliveries of ephedrine products on behalf of Mid-America, she did not know whether Mid-America or her brother-in-law were licensed to sell these products. Mrs. Bryngelson testified that when she made the above deliveries of listed chemicals, they were usually in 50-count boxes, in packets of six. She also delivered, however, ''a blue or green'' 60-count bottle, but she was unaware of the product names.

The government also called James Barbe as a witness. At the time of his testimony, Mr. Barbe was a Diversion Investigator with DEA's Milwaukee office. Mr. Barbe credibly testified that Mrs. Bryngelson submitted on behalf of her company an application for DEA registration as a distributor of the list I chemical ephedrine.[1] The Respondent's listed address on the application was in Merton, Wisconsin. The application was received by the Milwaukee Resident Office. D/I Barbe further testified that he was assigned to investigate the Respondent's application. The Respondent's proposed registered address is located in a residential location owned by Mrs. Bryngelson's sister, Theresa, and her husband Bruce Johnson. Mrs. Bryngelson stores her novelty products in a basement at that location. The residence is located in a rural community, and Mrs. Bryngelson does not reside at that location.

In an interview conducted of Mrs. Bryngelson by D/I Barbe, Mrs. Bryngelson stated that:

- She had no experience with over the counter medications or listed chemicals.

[1] At the hearing, Mrs. Bryngelson stated that she believed that she had applied for registration to sell both ephedrine and pseudoephedrine.

• Some of her customers had requested that the Respondent supply listed chemical products in addition to her normal product line, because they wanted her to be their sole source.

• When asked which listed chemical products she wished to distribute, she replied that she wanted to sell those in ''the green and blue bottle'' and ''Green E'' from Proactive Labs.

• She estimated that Respondent's percentage of sales of listed chemicals would be five percent of its total sales.

• In response to questions regarding the security for Respondent's proposed location, she said that she would use a locked door.

• She informed D/I Barbe that the proposed location is in a secluded 360 acres in the middle of a cornfield, and that the location never had break-ins or the like.

After a visit to Respondents location, D/I Barbe testified that he did not recall seeing a bolt lock on the door leading to the basement area. Mrs. Bryngelson testified that no alarm system or any electronic security system had been set up at the proposed registered location. She also testified that she was willing to have as much security installed as DEA required.

D/I Barbe also testified that he reviewed ''suspicious order'' procedures with Mrs. Bryngelson. He also discussed matters involving background checks on customers. D/I Barbe testified that Mrs. Bryngelson was unaware at that time of how to address suspicious orders. Mrs. Bryngelson also testified that some of her accounts had threatened to discontinue their business with Respondent unless she was able to supply listed chemical products. However, she was only able to identify three of the twenty-customers disclosed to DEA that had actually threatened such action. She also testified that she had recently added 80 additional customers, and that only ''a couple'' had been interested in obtaining ephedrine.

D/I Barbe also testified that he had asked Mrs. Bryngelson how many bottles she planned on selling, and she replied that it would be approximately twelve bottles per week Mrs. Bryngelson testified at the hearing, however, that this estimate was ''a wild guess.''

D/I Barbe further testified that he had obtained a list of Respondent's customers, and he verified the identity of these customers through telephone calls and visits. He found that most of Respondent's accounts were gas stations. D/I Barbe further testified that Respondent's customers were part of what DEA considers the non-traditional market, in that they were retail distributors that specialized in the sale of sundry items, not OTC pharmaceutical products. The customers were comprised primarily of gas stations and convenience stores. D/I Barbe also testified that some of Respondent's customers had already requested that Respondent carry 25 milligram tablets in 60 count bottles of ephedrine. D/I Barbe explained that these requests were significant in that the customers at issue had already begun requesting list I chemicals from the Respondent, a specific type of product, in packaging that is not normally seen in traditional retail establishments.

The Government also presented the transcribed testimony of Jonathan Robbin, of Ricercar, Incorporated, in Bethesda, Maryland. Mr. Robbin is a consultant in marketing information systems, databases and in the building of analytical models to assist businesses in decision making. Mr. Robbin provided the transcribed testimony on behalf of the Government in a previous DEA proceeding involving Branex, Incorporated. He was offered as an expert in statistical analysis, specifically in multi-varient statistics and the processing of population and economic census data. Mr. Robbin was also offered as an expert in quantitative marketing research specifically with respect to retail marketing and targeting. Mr. Robbin testified that according to the economic census, the normal or traditional place where consumers would purchase non-prescription drugs would be in drug stores, supermarkets and discount merchandise houses. Mr. Robbin testified that the expected sale of these products at convenience stores and convenience stores attached to gas stations were not significant enough to warrant inclusion in the most recent census data form for cold, sinus and allergy products. Mr. Robbin continued that such products represented ''a very small part of [the] total line of goods'' for convenience stores, whether or not they sell gasoline.

Based upon the above, the Deputy Administrator will now consider the factors used by DEA to determine the public interest. Under 21 U.S.C. 823(h), the Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that the registration of the applicant is inconsistent the public interest.[2] In considering the public interest, the Deputy Administrator shall consider:

1. Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

2. Compliance by the applicant with applicable Federal, State, and local laws;

3. Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

4. Any past experience of the applicant in the manufacture and distribution of chemicals and

5. Such other factors as are relevant to and consistent with the public health and safety.

Consideration of the first factor weighs against Respondent. Although Mrs. Bryngelson agreed to provide increased security at the residence where list I chemicals will be stored, she appears to have only a rudimentary knowledge of what would constitute a suspicious order.

With regard to the second factor, there was no evidence that the Respondent has failed to comply with Federal, State or local law. As for the third factor, there is no evidence that Mr. Bryngelson has any prior convictions related to controlled substances or chemicals. Accordingly, the second and third factors weigh in Respondent's favor. Addressing the fourth factor, Mrs. Bryngelson has no experience in the manufacture or distribution of chemicals, which weighs against Respondent.

With regard to the fifth factor, many considerations weigh heavily against registering Respondent as a distributor of list I chemicals. Virtually all of Respondent's's customers, consisting of gas stations and convenience stores, are considered part of the gray market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine. Some of these customers have already requested 60 count bottles of ephedrine, the favored packaging of illicit methamphetamine manufacturers. Mrs. Bryngelson also appears to have little idea of the extent of her market for listed chemicals. She testified that she expected to sell approximately 12 bottles of ephedrine each week, but she admitted that this was a ''wild guess.''

The Deputy Administrator finds that Mrs. Bryngelson's lack of a criminal record, compliance with the law and willingness to upgrade her security system are far outweighed by her lack of experience with selling list I chemicals and the fact that she intends to sell ephedrine almost exclusively in the gray market. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the

[2] This function has been redelegated to the Deputy Administrator of DEA.

authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100 and 0.104, hereby finds that registration of Respondent as a distributor of list I chemicals is not in the public interest. The Deputy Administrator hereby orders that the application for a DEA certificate of registration and any requests for renewal or modification submitted by Respondent Xtreme Enterprises be, and hereby are, denied.

Dated: December 2, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–31210 Filed 12–10–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; ERISA Summary Annual Report

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments on the proposed extension of the ERISA Summary Annual Report requirement.

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the Addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before February 10, 2003.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Section 104(b)(3) of ERISA and regulations published at 29 CFR 2520.104b-10 require, with certain exceptions, that administrators of employee benefit plans furnish participants and beneficiaries annually with material that fairly summarizes the information included in the plan's latest annual report. The regulation prescribes the format for the summary annual report (SAR), and requires that the SAR be provided within nine months after the close of the plan year.

The SAR is required to be provided to plan participants and beneficiaries to ensure that they are informed concerning the financial operation and condition of their plans. These disclosures to plan participants also assist the Department in its enforcement responsibilities by providing participants with sufficient information to exercise their rights under ERISA.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on February 28, 2003. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: ERISA Summary Annual Report.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0040.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 815,114.

Responses: 304,196,000.

Estimated Total Burden Hours: 325,240.

Estimated Total Burden Cost (Operating and Maintenance): $142,448,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 4, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 02–31217 Filed 12–10–02; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Crystal River Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 55, section 55.59(c) for Facility Operating License No. DPR–72, issued to Florida Power Corporation (the licensee), for operation of Crystal River Unit 3 (CR–3), located in Citrus County, Florida. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would constitute a one-time exemption to allow the licensed operator requalification examinations for CR–3 to be rescheduled. The requested exemption would extend the completion date for the examinations from December 31, 2002, to February 28, 2003.

The proposed action is in accordance with the licensee's application for exemption dated November 18, 2002.

The Need for the Proposed Action

The proposed action would extend the current CR–3 requalification program from December 31, 2002, to February 28, 2003. The proposed action is needed to allow for minimal interruption of the licensed personnel operating the plant during a potential labor action. Specifically, should such a labor action occur, the licensee has stated that CR–3 will be operated by personnel with current NRC licenses not affected by the labor action. The licensee deems it prudent to allow the licensed personnel operating the plant to remain fully available to stand watch on operating crews and not be distracted by completing the licensed operator requalification program by December 31, 2002.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with the extension of the operator requalification examinations from December 31, 2002, to February 28, 2002.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for CR–3.

Agencies and Persons Consulted

On November 22, 2002, the staff consulted with the Florida State official, William Passetti of the Florida Department of Health Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 18, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (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 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 4th day of December 2002.

For the Nuclear Regulatory Commission.

Allen G. Howe,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–31215 Filed 12–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 139th meeting on December 17–19, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, December 17, 2002

A. *10:30–10:40 a.m.: Opening Statement* (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate several items of interest.

B. *10:40–12:15 p.m.: Staff Analyses for Understanding Repository Performance* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on its analyses development on the use of risk information for the proposed Yucca Mountain repository.

C. *1:30–3:30 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- Staff Analyses for Understanding Repository Performance
- Conclusions Regarding the Safety of Spent Nuclear Fuel Transportation
- Trip Report: October Visit to Swedish Waste Management Facilities andParticipation in Berlin Quadripartite Meeting

D. *3:45–6 p.m.: Preparation for Meeting with the NRC Commissioners* (Open)—The next meeting with the NRC Commissioners is scheduled to be held at 9:30 a.m. in the Commissioners' Conference Room, One White Flint North on December 18, 2002. The Committee will review its proposed presentations.

Wednesday, December 18, 2002

E. *8:30–8:35 a.m.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. *8:35–9:10 a.m.: Discussion of Topics for Meeting with the NRC Commissioners* (Open)—The Committee will discuss topics scheduled for the ACNW meeting with the NRC Commissioners at 9:30 a.m.

G. *9:30–11:30 a.m.: Meeting with the NRC Commissioners* (Open)—The Committee will meet with the NRC Commissioners in the Commissioners' Conference Room, One White Flint North to discuss the following:

- HLW Program Risk Insights Initiative
- Yucca Mountain Review Plan
- Spent Fuel Transportation
- Igneous Activity at Yucca Mountain
- Container Life and Source Term KTI

H. *1–3:30 p.m.: NRC Nuclear Waste Safety Research and Technical Assistance Programs* (Open)—The

Committee will hear from representatives of the NRC staff and the Center for Nuclear Waste Regulatory Analyses on the NRC's Waste Safety Technical Assistance and Research programs.

I. *3:45–6 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports listed under Item C.

Thursday, December 19, 2002

J. *8–8:05 a.m.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

K. *8:05–10:45 a.m.: ACNW Action Plan* (Open)—The Committee members will discuss the ACNW 2002/2003 Action Plan and outline plans for sessions to assess Committee performance and update its priorities.

L. *10:45–11 a.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63459). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 a.m. and 4 p.m. EST, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW meeting schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

The ACNW meeting dates for Calendar Year 2003 are provided below:

ACNW meeting No.	Meeting dates
	January 2003—no meeting.
140	February 18–20, 2003.
141	March 25–27, 2003.
142	April 22–24, 2003.
143	May 28–30, 2003.
144	June 24–26, 2003.
145	July 29–31, 2003.
	August 2003—no meeting.
146	September 16–18, 2003 (Nevada).
147	October 21–23, 2003.
148	November 18–20, 2003.
	December 2003—no meeting.

Dated: December 5, 2002.

J. Samuel Walker,

Acting Secretary of the Commission.

[FR Doc. 02–31213 Filed 12–10–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46946; File No. SR–NASD–2002–172]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Delay the Imposition of Distributor Fees for SuperMontage View Suite Data Feeds Under NASD Rule 7010(q)

December 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 29, 2002, the National Association of Securities Dealers, Inc. (''NASD'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to delay charging the distributor fees for any SuperMontage View Suite data feeds under NASD Rule 7010(q) until January 1, 2003.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq believes that the new SuperMontage data feeds approved by the Commission vastly expand the ability of market participants to see and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

show trading interest.[3] Those data feeds are about to be complete: SuperMontage was launched on October 14, 2002, with five stocks, and by December 2, 2002, all Nasdaq stocks will be traded on SuperMontage.

Under Nasdaq's recently approved NASD Rule 7010(q),[4] Nasdaq planned to begin charging both distributors and subscribers as of the day all stocks will be traded—December 2, 2002. Nasdaq represents, however, that its distributors, particularly its small distributors, have recently advised Nasdaq that they need more time to educate and sign up a sufficient number of subscribers to support the fixed fee distributors pay. Nasdaq believes that it should promote informed decision making by investors; thus, Nasdaq supports the distributors request for more time.

Nasdaq proposes to delay charging any of the distributor fees in NASD Rule 7010(q) until January 1, 2003. This proposed ''fee holiday'' would relieve all persons subject to the distributor fee from payment until January 1, 2003. Nasdaq believes that this one-month delay should provide its distributors and Nasdaq the opportunity to better inform subscribers about the data packages available through the View Suite products. During this time, Nasdaq expects subscribers to indicate their interest by signing up for the data packages and paying the subscriber charge. Nasdaq expects that by the end of the fee holiday, the necessary subscriber base will exist for distributors to be confident they can incur the fixed distributor fee.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] including Section 15A(b)(6) of the Act,[7] which requires, among other things, that a registered national securities association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change protects investors and the public interest in that it allows investors to become more informed regarding the new data feeds and allows distributors a brief necessary period to build a stable subscriber base.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq has neither solicited nor received 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 pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b-4(f)(6)[6] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the implementation of Nasdaq's fee holiday proposal would help distributors and Nasdaq to focus immediately on educating investors and potential subscribers. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[7]

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 NASD. All submissions should refer to File No. SR–NASD–2002–172 and should be submitted by January 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31198 Filed 12–10–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) and Securities Exchange Act Release No. 45790 (April 19, 2002), 67 FR 21007 (April 29, 2002).

[4] *See* Securities Exchange Act Release No. 46843 (November 18, 2002), 67 FR 70471 (November 22, 2002).

[6] 15 U.S.C. 78*o*-3

[7] 15 U.S.C. 78*o*-3(6).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b-4(f)(6).

[7] 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).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46949; File Nos. SR–NASD–2002–161; SR–NYSE–2002–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. and Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Establishing Effective Dates for Certain Provisions of NASD Rule 2711, Research Analysts and Research Reports and Certain Provisions of NYSE Rule 472, Communications With the Public

December 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 2002, the National Association of Securities Dealers, Inc. (''NASD''), and on November 8, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations (''SROs''). On November 26, 2002, NASD filed amendment No. 1 to the proposed rule change.[3] The SROs have designated the proposed rule changes as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act,[4] which renders the proposals effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

A. NASD

NASD is filing with the Commission a proposed rule change to establish May 5, 2003 as the effective date for NASD Rules 2711(b) and (c) for members that over the previous three years, on average, have participated in 10 or fewer investment banking transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. NASD Rules 2711(b) and (c), when effective, will prohibit a research analyst from being subject to the supervision or control of any employee of a member's investment banking department, and will further require legal or compliance personnel to intermediate certain communications between the research department and either the investment banking department or the company that is the subject of a research report or recommendation (''subject company'').

B. NYSE

The NYSE is filing with the SEC a proposed rule change that would change the effective date for certain provisions of Rule 472 (''Communications with the Public'') for certain members and member organizations.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In their filings with the Commission, NASD and the NYSE included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. NASD and the NYSE have prepared summaries, set forth in Sections A, B, and C below.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. NASD's Purpose

NASD is filing the proposed rule change to establish May 5, 2003 as the effective date for NASD Rules 2711(b) and (c) for members that over the previous three years, on average per year, have participated in 10 or fewer investment banking transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. Pursuant to the SEC's approval of SR–NASD–2002–87,[5] NASD Rules 2711(b) and (c) as applied to this class of members otherwise would go into effect on November 6, 2002. NASD seeks to delay implementation of these provisions for this limited set of members to allow NASD to continue to explore with the SEC the appropriate treatment of small firms under NASD Rule 2711 and the recently-enacted Sarbanes-Oxley law (''Sarbanes-Oxley''). Smaller members often are the sole or primary source of underwriting and research coverage for some smaller companies; therefore, NASD continues to consider ways to preserve this important role served by these firms, to the extent consistent with the requirements and objectives of Sarbanes-Oxley and NASD Rule 2711.

On May 10, 2002, the Commission approved new NASD Rule 2711, which governs conflicts of interest when research analysts recommend equity securities in research reports and during public appearances.[6] The Commission approved a staggered implementation period for the rule. Most provisions of the rule became effective on July 9, 2002, including those that restrict supervision and control of research analysts by the investment banking department. The ''gatekeeper'' provisions, described below, became effective September 9, 2002. The remaining provisions of the Rule become effective on November 6, 2002, including two provisions that were delayed pursuant to approval of SR–NASD–2002–87: (1) Provisions that require disclosure of investment banking compensation received by foreign affiliates and (2) prohibitions against trading against a member's recommendation for those members that have instituted a ban on ownership of securities covered by an analyst and that have instituted a specific, periodic divestiture schedule.

NASD Rule 2711(b) contains provisions that generally restrict the relationship between the research and investment banking departments, including ''gatekeeper'' provisions that require a legal or compliance person to intermediate certain communications between the research and investment banking departments. NASD Rule 2711(b)(1) prohibits a research analyst from being under the control or supervision of any employee of the investment banking department. NASD Rule 2711(b)(2) prohibits employees in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Philip Shaikun, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 26, 2002 (''Amendment No. 1'').In Amendment No. 1, NASD established a further condition for delaying the implementation of NASD Rules 2711(b) and (c) until May 5, 2003 for members that over the previous three years, on average per year, have participated in 10 or fewer investment banking transactions or underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. Amendment No. 1 requires that those firms that meet the eligibility requirements outlined above must maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rules 2711(b) and (c). In Amendment No. 1, NASD also corrected a technical error that appeared in its original filing.

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 46165 (July 3, 2002), 67 FR 46555 (July 15, 2002).

[6] *See* Securities Exchange Act Release No. 45908, 67 FR 34968 (May 16, 2002).

the investment banking department from reviewing or approving any research reports prior to publication. NASD Rule 2711(b)(3) creates an exception to (b)(2) to allow investment banking personnel to review a research report prior to publication to verify the factual information contained therein and to screen for potential conflicts of interest. Any permissible written communications must be made through an authorized legal or compliance official or copied to such official. Oral communications must be made through, or in the presence of, an authorized legal or compliance official and must be documented.

Similarly, NASD Rule 2711(c) restricts communications between a member and the subject company of a research report, except that a member may submit sections of the research report to the company to verify factual accuracy and may notify the subject company of a ratings change after the ''close of trading'' on the business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must first receive written authorization from legal or compliance.

As the Commission noted in its approval order of NASD Rule 2711, several commenters argued that the gatekeeper provisions would impose significant costs, especially for smaller firms that would have to hire additional personnel. Commenters also noted that personnel often wear multiple hats in smaller firms, thereby causing a greater burden to comply with the restriction on supervision and control by investment banking personnel over research analysts. These comments raised the prospect that the rules might force some firms out of business or reduce important sources of capital and research coverage for smaller companies and companies of regional or local interest.

NASD shares the concern raised by these commenters. To that end, NASD has been exploring with the SEC possible exemptions or accommodations that can be made while preserving the purposes of the rule. In SR–NASD–2002–87, NASD sought comment on whether the parameters set forth above to be eligible for delayed implementation of Rules 2711(b) and (c) should be made permanent or whether another approach should be considered. Moreover, in July 2002, NASD issued *Notice to Members* 02–44, which similarly sought comment on whether certain members should be exempted from certain provisions of the Rule and what criteria should be employed to fashion such an exemption. NASD received 10 comments in response to the *Notice to Members*.[7] Generally, the comments emphasized the financial and administrative burdens imposed by NASD Rule 2711 to implement the gatekeeper provisions and to structure firms so that research personnel are not subject to supervision by investment banking personnel. Commenters argued that the conflicts addressed by NASD Rule 2711 are less pronounced with respect to smaller firms and that the burdens of compliance could force firms to discontinue their research business.

According to NASD, the enactment of Sarbanes-Oxley has further complicated the picture with respect to small firms. NASD believes that, while the provisions of Sarbanes-Oxley related to analyst conflicts closely parallel NASD Rule 2711 in many respects, they also require the SEC or self-regulatory organizations, such as NASD and NYSE, to promulgate additional—and sometimes more burdensome—rules on firms to further limit the influence of investment banking on research and increase analyst accountability. Notably, Sarbanes-Oxley makes no explicit exception for small firms. NASD is currently assessing, with the SEC and NYSE, the implications of Sarbanes-Oxley generally and its impact on small firms, specifically.

Meanwhile, compliance with NASD Rules 2711(b) and (c) continues to pose financial and administrative challenges for certain smaller firms. As such, NASD believes it appropriate to extend the effective date of those provisions for the limited class of members cited above, so that NASD may fully explore with the SEC the treatment of small firms that is consistent with the mandates of Sarbanes-Oxley, the purposes of NASD Rule 2711 and the best interests of the markets and the investing public. Therefore, NASD proposes to delay the effective date of NASD Rules 2711(b) and (c) until May 5, 2003 for those members that over the previous three years, on average per year, have participated in 10 or fewer investment banking transactions or underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.

As a further condition for the delayed implementation date, those firms that meet the eligibility requirements outlined above would be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rules 2711(b) and (c).

2. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that this proposed rule change would reduce or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts. NASD further believes that the proposed rule change will provide investors with better and more reliable information with which to make investment decisions.

3. NYSE's Purpose

The Exchange is filing the proposed rule change to establish May 5, 2003, as the effective date for: NYSE Rules 472(b)(1), (2) and (3), subject to certain conditions, for members and member organizations that over the previous three years, on average, have participated in ten or fewer underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.

On May 10, 2002, the Commission approved amendments to NYSE Rules 351 (''Reporting Requirements'') and 472, which place prohibitions and/or restrictions on Investment Banking Department, Research Department and Subject Company relationships and communications and impose new disclosure requirements on members and member organizations and their associated persons.[9] At the same time, the Commission also approved a

[7] Letter from David Amster, CRT Capital Group, dated August 19, 2002; Letter from Peter V.B. Unger, Fulbright & Jaworski, LLP, dated August 30, 2002; Letter from First Analysis Securities Corp., dated August 30, 2002; Letter from Scott Cleland and John Eade, Investorside Research Association, dated August 29, 2002; Letter from W. Gray Medlin, The Carson Medlin Co., dated August 29, 2002; Letter from Cathryn Streeter, BioScience Securities, Inc., dated August 28, 2002; E-mail from James Nelson, Minnesota Valley Investments, dated July 31, 2002; E-mail from Joe B. Kercheville, Kercheville & Company, dated August 28, 2002; E-mail from Ray Chin, DBS Vickers Securities (USA) Inc., dated July 29, 2002; Letter from Stuart J. Kaswell, Securities Industry Association, dated August 30, 2002.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] *See* Securities Exchange Act Release No. 45908, 67 FR 34968 (May 16, 2002).

staggered implementation period for the Rules. Most provisions of the Rules became effective on July 9, 2002, including those that restrict supervision and control of associated persons by the investment banking department and those that require disclosure of investment banking compensation received from a subject company. The ''gatekeeper'' provisions, described below, became effective September 9, 2002.

On July 9, 2002, the Exchange filed, for immediate effectiveness, SR–NYSE–2002–23 [10] that extended the effective date of September 9, 2002 for certain provisions of NYSE Rule 472. Specifically, November 6, 2002 was established as the effective date for NYSE Rules 472(b)(1), (2) and (3) (''Gatekeeper Provisions'') for members or member organizations that over the previous three years, on average, have participated in 10 or fewer investment banking transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.

Small Firm Relief

NYSE Rule 472 contains provisions that generally restrict the relationship between the research and investment banking departments, including ''gatekeeper'' provisions that require a legal or compliance person to intermediate certain communications between the research and investment banking departments. NYSE Rule 472(b)(1) prohibits an associated person (also referred to throughout this filing as a ''research analyst'') from being under the control or supervision of any employee of the investment banking department.

NYSE Rule 472(b)(1) also prohibits the investment banking department from reviewing or approving any research reports prior to distribution. NYSE Rule 472(b)(2) creates an exception to the prohibition of (b)(1) to allow investment banking personnel to review a research report prior to publication to verify the factual information contained therein and to screen for potential conflicts of interest. Any permissible written communications must be made through an authorized legal or compliance official or copied to such official. Oral communications must be made through, or in the presence of, an authorized legal or compliance official and must be documented.

Similarly, NYSE Rule 472(b)(3) restricts communications between a member or member organization and the subject company of a research report, except that a member or member organization may submit sections of the research report to the subject company to verify factual accuracy and may notify the subject company of a ratings change after the ''close of trading'' on the business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the research report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must first receive written authorization from a legal or compliance official.

As the Commission noted in its approval order,[11] several commenters argued that the ''gatekeeper'' provisions would impose significant costs, especially for smaller firms that may have to hire additional personnel to comply with the requirements. Commenters also noted that personnel often wear multiple hats in smaller firms, thereby causing a greater burden to comply with the restriction on supervision and control by investment banking personnel over research analysts. These comments raised the prospect that the Rules might force some firms out of the investment banking or research business and/or reduce important sources of capital and research coverage for smaller companies.

In order to provide time to review those issues, the Exchange is proposing to delay implementation of NYSE Rules 472(b)(1), (2), and (3) until May 5, 2003 for members and member organizations that over the previous three years, on average, have participated in 10 or fewer underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.

Those members or member organizations that meet the eligibility requirements outlined above for the delayed implementation date, would be required to disclose in research reports that they are delaying implementation of this Rule provision until May 5, 2003. Further, they would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of NYSE Rules 472(b)(2)(i) and (ii).

The Exchange believes it appropriate to extend until May 5, 2003, the effectiveness of this provision for small firms that meet the requirements described above. The Exchange believes that for these members and member organizations, provided they comply with the conditions described, the temporary relief from these provisions will not adversely impact the spirit or intent of the Rule initiative.

4. NYSE's Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is Section 6(b)(5) of the Exchange Act [12] which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interests.

B. Self-Regulatory Organizations' Statement on Burden on Competition

NASD and the NYSE do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule

NASD and the NYSE have neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule changes have been filed by NASD and NYSE as stated policies, practices, or interpretations with respect to the meaning, administration, or enforcement of an existing rule series under Rule 19b–4(f)(1) under the Act.[13] Consequently, they have become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder.

At any time within 60 days of this filing, the Commission may summarily abrogate these proposals 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.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[10] *See* Securities Exchange Act Release No. 46182 (July 11, 2002), 67 FR 47013 (July 17, 2002).

[11] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 240.19b–4(f)(1).

[14] For SR–NASD–2002–161, the 60-day period would run from the date of filing of Amendment No. 1.

including whether the proposed rule changes, as amended, are 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal offices of the NASD and NYSE. All submissions should refer to the file numbers SR–NASD–2002–161 and SR–NYSE–2002–60 and should be submitted by January 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31199 Filed 12–10–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9T42]

State of New Jersey (and Contiguous Counties in New York)

Bergen County and the contiguous counties of Essex, Hudson and Passaic in the State of New Jersey; and Bronx, New York, Rockland and Westchester Counties in the State of New York constitute an economic injury disaster loan area as a result of a fire that occurred on October 1, 2002 in Fair Lawn, New Jersey. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on September 4, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.5 percent.

[15] 17 CFR 200.30–3(a)(12).

The numbers assigned for economic injury for this disaster are 9T4200 for New Jersey; and 9T4300 for New York.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: December 4, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–31190 Filed 12–10–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 398X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in San Bernardino County, CA

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.92-mile line of railroad between milepost 9.48 and milepost 11.40 in Redlands, San Bernardino County, CA. The line traverses United States Postal Service Zip Codes 92373 and 92374.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 11, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 20, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 2, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 17, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by December 12, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *"http://WWW.STB.DOT.GOV."*

Decided: December 4, 2002.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–31197 Filed 12–10–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 198X)]

Union Pacific Railroad Company—Abandonment Exemption—in Alameda County, CA

On November 22, 2002, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 1.40-mile line of railroad, known as the Ninth Street Electric Industrial Lead, from milepost 0.00 (south of Powell Street) in Emeryville to milepost 1.40 at the end of the line (north of Heinz Avenue) in Berkeley, Alameda County, CA. The line traverses U.S. Postal Service Zip Codes 94608 and 94710, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 12, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 2, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 198X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to UP's petition are due on or before January 2, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Federal Information Relay Service (FIRS) for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at ''*http://WWW.STB.DOT.GOV.*''

Decided: December 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–31196 Filed 12–10–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Interim Guidance Concerning New Statutory Disclosure and Mandatory Availability Requirements of the Terrorism Risk Insurance Act of 2002

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice.

SUMMARY: This notice provides interim guidance to insurers concerning certain statutory disclosure and mandatory availability requirements contained in the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297). In addition, this notice provides interim guidance to insurers concerning the types of commercial property and casualty insurance covered by the Act and concerning the term ''direct earned premium'' as used in the Act.

DATES: This notice is effective immediately and will remain in effect until superceded by regulations or by subsequent notice.

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions and GSE Policy 202–622–2730; Martha Ellett, Attorney-Advisor, Office of Assistant General Counsel (Banking and Finance) 202–622–0480.

SUPPLEMENTARY INFORMATION: This notice provides interim guidance to assist insurers in meeting certain requirements of the Terrorism Risk Insurance Act of 2002 pending the issuance of regulations by the Department of the Treasury. The interim guidance contained in this notice may be relied upon by insurers in complying with these statutory requirements prior to the issuance of regulations, but is not the exclusive means of compliance. This interim guidance remains in effect until superceded by regulations or subsequent notice.

I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (the Act). The Act became effective immediately. It establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, as defined in the Act. The Terrorism Risk Insurance Program is administered and implemented by the Department of the Treasury (Treasury) and will sunset on December 31, 2005.

II. Interim Guidance

Treasury will be issuing regulations to administer and implement the Program. This notice is issued to assist insurers in complying with certain statutory requirements prior to the issuance of regulations. This notice contains interim guidance on disclosures required by sections 103 and 105 of the Act and concerning compliance with the mandatory availability requirements in section 103(c) of the Act. In addition, this notice provides interim guidance concerning commercial lines of property and casualty insurance covered by section 102(12) and concerning the statutory term ''direct earned premium.'' Treasury also may issue additional interim guidance as necessary prior to the issuance of regulations.

A. Disclosures to Policyholders

What Disclosures Are Required by the Act in Section 103(b)(2)?

The Act requires that disclosures be made to policyholders as part of the conditions for Federal payments under the Terrorism Risk Insurance Program. Section 103(b)(2) requires an insurer to provide clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Terrorism Risk Insurance Program and the Federal share of compensation for insured losses under the Program.

- For existing (in-force) policies issued before the date of enactment (November 26, 2002), the Act requires that disclosure to the policyholder be made not later than 90 days after November 26, 2002;
- For policies issued within 90 days of November 26, 2002, the Act requires the disclosure to the policyholder be made at the time of offer, purchase and renewal of the policy; and
- For policies issued more than 90 days after November 26, 2002, the Act requires disclosure on a separate line item in the policy at the time of offer, purchase and renewal of the policy.

What Disclosures (or Statements) Are Required by the Reinstatement Provisions in Section 105(c) of the Act?

Section 105(c) of the Act allows an insurer to reinstate preexisting exclusions of coverage for an act of terrorism in a contract for property and casualty insurance that is in force on the date of enactment, notwithstanding the general nullification and general preemption of terrorism exclusions in force on the date of enactment of the Act in section 105(a) and (b), but only if (1) the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement or (2) if (A) the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage and (B) the insurer provided notice, at least 30 days before any such reinstatement of (i) the increased premium for such terrorism coverage and (ii) the rights of the insured with respect to such coverage, including the date upon which the exclusion would be reinstated if no payment is received.

How May an Insurer Comply With the Disclosure Requirements of Section 103(b) (2)(A) if There Is No Change in the Premium?

Prior to the issuance of regulations or further guidance by Treasury, any insurer that uses the Model Form No. 2 attached to the model bulletin on Terrorism Risk Insurance dated November 26, 2002, of the National Association of Insurance Commissioners (NAIC), and posted on the NAIC Web site at *http://www.naic.org/pressroom/releases/disclose_two_final.pdf,* as a policyholder disclosure form for in-force policies, if the insurer makes no change in the existing premium, will be deemed by Treasury to be in compliance with section 103(b)(2)(A).

How May an Insurer Comply With the Disclosure Requirements of Section 103(b)(2)(B) for Policies Issued Within 90 Days of Enactment?

Either NAIC Model Disclosure Form No. 1 which is posted on the NAIC Web site at *http://www.naic.org/pressroom/releases/disclose_one_final.pdf,* or NAIC Model Disclosure Form No. 2 which is posted on the NAIC Web site at *http://www.naic.org/pressroom/releases/disclose_two_final.pdf,* may be modified as appropriate by insurers for the particular policy and used for policies issued within 90 days of enactment. Prior to the issuance of regulations or further guidance by Treasury, any insurer that modifies as appropriate and uses either of these model disclosure forms as its disclosure for policies issued within 90 days of enactment of the Act will be deemed by Treasury to be in compliance with the section 103(b)(2)(B) disclosure requirements.

May an Insurer Use the Same Form To Comply With the Reinstatement Requirements of Section 105(c) and the Disclosure Requirements of Section 103(b)(2)(A) if Applicable?

Yes. Prior to the issuance of regulations or further guidance by Treasury, if applicable to an existing policyholder, *e.g.* for in-force policies where there is a change of premium, Treasury will deem disclosure by an insurer to an existing policyholder using NAIC Model Disclosure Form 1, posted on the NAIC Web site at *http://www.naic.org/pressroom/releases/disclose_one_final.pdf,* to comply with the disclosure requirements of section 105(c) of the Act, as well as with the requirements of section 103(b)(2)(A).

Is This Interim Guidance the Exclusive Means by Which an Insurer May Comply With Disclosure or Reinstatement Requirements of the Act?

No. This interim guidance concerning certain disclosures as specified above may be relied upon by insurers as a safe harbor in complying with these requirements of the Act until regulations or further guidance is issued by Treasury, but it is not the exclusive means by which an insurer may comply with these requirements of the Act.

How May an Insurer Comply With the ''Separate Line Item'' Requirement in Section 103(b)(2)(C) for Policies Issued More Than 90 Days After the Date of Enactment?

Treasury will be issuing additional interim guidance as appropriate, and will be issuing regulations concerning other disclosure requirements, such as the separate line item disclosure requirement.

May an Insurer Comply With the Disclosure Requirements of the Act Through a Broker or Other Agent?

Yes. In many situations, commercial property and casualty insurance is procured for policyholders through an insurance broker or other intermediary acting as agent for the insurer. Prior to the issuance of regulations or further guidance by Treasury, if the normal form of communication between an insurer and the policyholder is through an insurance broker (or other intermediary acting as agent for the insurer), an insurer may provide the Act's required disclosures through such agents. While this interim guidance permits an insurer to provide disclosures to its policyholders through an insurance broker or other agent, the responsibility for ensuring that such disclosures are provided to policyholders still rests with the insurer.

B. Mandatory Availability

What Does ''Make Available'' Mean?

From enactment through the end of Program Year 2 (December 31, 2004), section 103(c)(1) of the Act requires that an insurer:

(A) Shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(B) Shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

Until Treasury issues regulations or provides further guidance on the requirements of section 103(c), ''make available'' means an insurer is required to offer coverage to a policyholder for acts of terrorism (as defined in the Act) that does not differ materially from the terms, amounts, and other coverage limitations offered to the policyholder for losses from events other than acts of terrorism. For example, compliance with ''make available'' means that insurers offer coverage for acts of

terrorism (as defined in the Act) at deductibles and limits that do not differ materially from the coverage provided for other perils.

For the purposes of this interim guidance, the ''make available'' requirement does not mean that insurers must make available coverage for all types of risks. For example, if an insurer does not cover all types of risks, either because the insurer is outside of direct State regulatory oversight or a State permits exclusions for certain types of losses (*e.g.*, nuclear, biological, or chemical events) an insurer would not be required to make such coverage available.

This interim guidance is consistent with the Act's stated purpose of ensuring widespread availability of terrorism risk insurance while preserving State insurance regulation. During the course of implementing the Program, Treasury will be monitoring the pricing and availability of terrorism risk insurance coverage as part of the Act's requirements that Treasury study the effectiveness of the Program (section 108(d)(1)) and compile information on the premium rates of insurers (section 104(f)).

How May Insurers Comply With the ''Make Available'' Provision?

For purposes of this interim guidance, an insurer that makes a formal offer of coverage to a policyholder that does not differ materially from the terms (other than price), amounts and other coverage limitations offered to the policyholder will be deemed in compliance with the ''make available'' requirement.

May an Insurer Offer Coverage for Acts of Terrorism (as Defined in the Act) That Differs Materially From the Terms, Amounts, and Other Coverage Limitations for Losses Arising From Events Other Than Acts of Terrorism?

For the purposes of this interim guidance, an insurer may offer coverage that is on different terms, amounts, or coverage limitations as long as the insurer satisfies the ''make available'' requirements (as described in the previous question and answer) and as long as such offers do not violate any State laws or regulations. For example, in a State that requires the provision of full coverage without any exclusion, the Act would not preempt that State's preexisting requirements. In contrast, if a State permits certain exclusions or allows for other limitations, or if an insurance policy is not directly governed by State requirements, then after first satisfying the ''make available'' requirement (as described in the previous question and answer), an insurer could offer limited coverage or coverage with exclusions.

C. Property and Casualty Insurance and Direct Earned Premium

What Types of Property and Casualty Insurance Are Covered by the Program?

Section 102(12) of the Act defines property and casualty insurance to mean commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety insurance.

As interim guidance prior to the issuance of regulations, Treasury deems the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14) to be included in the Program: Line 1—Fire; Line 2.1—Allied Lines; Line 3—Farmowners Multiple Peril; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 19.3—Commercial Auto No-Fault (personal injury protection); Line 19.4—Other Commercial Auto Liability; Line 21.2—Commercial Auto Physical Damage; Line 22—Aircraft (all perils); Line 24—Surety; Line 26—Burglary and Theft; and Line 27—Boiler and Machinery.

Section 102(12) (B) of the Act lists types of insurance coverage that are excluded from the Program. These are private mortgage or title insurance; financial guaranty insurance issued by monoline financial guaranty insurance corporations; insurance for medical malpractice; health or life insurance, including group life insurance; flood insurance provided under the National Flood Insurance Act of 1968; and reinsurance or retrocessional reinsurance.

In addition, the Act excludes, ''Federal crop insurance issued or reinsured under the Federal Crop Insurance Act, or any other type of crop or livestock insurance that is privately issued or reinsured.'' As interim guidance to facilitate implementation, Treasury deems the phrase ''any other type of crop or livestock insurance that is privately issued or reinsured'' to mean Multiple Peril Crop insurance reported on Line 2.2 of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14).

How Is Direct Earned Premium Measured?

The Act contains the term ''direct earned premium.'' The Act specifies an insurer's direct earned premiums over a given calendar year as the deductible base for purposes of calculating an ''insurer deductible'' as defined in section 102(7) of the Act. For purposes of interim guidance to enable insurers that report to the NAIC to calculate their ''insurer deductible'' and to facilitate immediate implementation of the Program, the term ''direct earned premium'' means the direct premiums earned as reported to the NAIC in the Annual Statement in column 2 of the Exhibit of Premiums and Losses (commonly known as Statutory Page 14). Treasury will be issuing additional guidance for entities covered under the Program that do not report to the NAIC.

Dated: December 3, 2002.

Peter R. Fisher,

Under Secretary of the Treasury.

[FR Doc. 02–31256 Filed 12–10–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Study of the Impact of Threat of Terrorism on Availability of Group Life Insurance

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice; request for comments.

SUMMARY: Recently enacted terrorism insurance legislation requires the Secretary of the Treasury (Treasury) to study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to life insurers in the United States that issue group life insurance, and the extent to which the threat of terrorism is reducing the availability of group life insurance for consumers in the United States. To assist in this study, the Treasury is soliciting comments on the questions listed below.

DATES: Comments must be in writing and received by January 10, 2003.

ADDRESSES: Send comments by e-mail to *grouplifestudy@do.treas.gov.* Please include your name, affiliation, address, e-mail address, and telephone number. All submissions should be captioned ''Comments on Group Life Insurance Study''.

FOR FURTHER INFORMATION CONTACT: Lucy Huffman, Project Manager, Office of Microeconomic Analysis, 202–622–0198; John Worth, Acting Director, Office of Microeconomic Analysis, 202–622–2683; U.S. Treasury Department.

SUPPLEMENTARY INFORMATION: Section 103(h) of the Terrorism Risk Insurance Act of 2002 (Public Law No. 107–297)

(Act) requires the Treasury to study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to life insurers in the United States that offer group life insurance, and the extent to which the threat of terrorism is reducing the availability of group life insurance coverage for consumers in the United States. To the extent that the Treasury determines that such coverage is not or will not be reasonably available to both such insurers and consumers, the Treasury is directed to apply, in consultation with the National Association of Insurance Commissioners, the provisions of the Act, as appropriate, to group life insurers; and provide such restrictions, limitations, or conditions with respect to any financial assistance provided that Treasury deems appropriate, based on this study.

The purpose of the Act is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and to allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving state insurance regulation and consumer protections.

Treasury is soliciting comment in response to the following questions, including empirical data in support of such comments where appropriate and available.

I. The Impact of Terrorism Risk on Group Life Insurers

1.1 Who are the suppliers of the group life insurance in the U.S.; who are the buyers; and how are sellers and buyer brought together?

1.2 What is the corporate status of group life insurers? Are they generally stand-alone companies, or affiliates of other corporations? If the latter, what are the major business interests of the other corporations?

1.3 What characterizes group life insurance offerings? Please describe typical terms of coverage, offer and renewal procedures, and other relevant information.

1.4 How is group life insurance regulated in the U.S.? Are there significant differences in group life regulation among the states and, if so, what are these differences?

1.5 What are the risk exposures of customers and how are they concentrated—by locality, by type of employer, other? What is the annual premium structure for these different exposures?

1.6 What amounts of loss exposure are typically reinsured? Please describe the structure of typical reinsurance contracts, including the period of coverage and typical renewal process.

1.7 What was the amount of group life insurance losses in the terrorist attack of September 11, 2001; and how was it distributed—losses to insurers versus losses to reinsurers? How was it distributed within each group?

1.8 What was the availability and price of reinsurance in the period before and following September 11, 2001, for group life insurance? What is it today? Please be specific by type and amount of coverage available, deductible, sublimit, renewability, and other relevant characteristics.

1.9 What is the current capacity of group life insurers in the U.S. to bear terrorism risk, individually and as affiliates of other companies, taking into consideration their reinsurance situation? Please provide empirical support for responses as available and appropriate.

1.10 Are there other sources of protection for terrorism risks in group life insurance, *e.g.*, through capital markets? To what extent are these sources used currently? What are the issues associated with expanded use of these sources?

1.11 Please address and provide empirical support for whether group life insurers have reasonable access to adequate and affordable catastrophe reinsurance, and, if not, why inclusion in the Act would correct this situation. In so doing, please compare the magnitude and scope of the situation of group life insurers to the situation previous to the passage of the Act of those property and casualty insurers that are included in the Act.

II. The Impact of Terrorism Risk on Group Life Insurance Markets

2.1 Please describe in detail, current group life insurance market conditions, including availability and pricing, by type and location of employers and other purchasers.

2.2 What is the impact of terrorism risk on group life insurance availability for employees and other consumers? Please describe in as much detail as possible which employees and other consumers have been significantly affected, including availability and pricing, by type and location of employer or other purchaser of group life coverage.

2.3 What is the cost and availability of alternative sources of life insurance coverage for those employees and other consumers affected by the reduced availability and affordability of group life insurance?

2.4 Please explain and provide empirical support concerning the extent to which the threat of terrorism is reducing reasonable availability of group life insurance coverage for employees and other consumers in the U.S., and whether it would continue to be reduced if group life insurers continue to be excluded from the Program. Please compare the magnitude and scope of the impact on consumers of not including group life insurance to the impact on consumers previous to the passage of the Act of those property and casualty insurance lines covered under the Act. Please explain how inclusion would correct this situation.

III. The Potential for Inclusion in the Federal Program

3.1 Treasury presumes that, if it would be appropriate to include group life insurance under the Act, Treasury would apply the current provisions of the Act to group life insurers. If this is not the case, please discuss and provide a detailed explanation of the changes that would need to be made to implement the Program for group life insurers. Please include discussion of any operational difficulties with applying the current provisions in the Act to group life insurers, any other characteristics of group life insurance that should be considered with respect to any financial assistance if group life insurers were included under the Act, and the benefits and costs, including administrative costs, of any proposed changes to the provisions for group life insurers.

Dated: December 3, 2002.

Mark Warshawsky,

Deputy Assistant Secretary for Economic Policy, Microeconomic Analysis.

[FR Doc. 02–31211 Filed 12–10–02; 8:45 am]

BILLING CODE 4810–25–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)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, March 25, 2003.

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 Tuesday, March 25, 2003 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 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

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: November 27, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31226 Filed 12–10–02; 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)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, February 25, 2003.

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 Tuesday, February 25, 2003 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 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

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: November 27, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31227 Filed 12–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Payment of United States Savings Bonds/Notes and/or Related Checks in an Amount Not Exceeding $1,000 By The Survivor of a Deceased Owner Whose Estate is Not Being Administered.

DATES: Written comments should be received on or before February 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@pbd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Payment of United States Savings Bonds/Notes and/or Related Checks in an Amount Not Exceeding $1,000 By The Survivor Of A Deceased Owner Whose Estate Is Not Being Administered.

OMB Number: 1535–0035.

Form Number: PD F 4881.

Abstract: The information is requested from the survivors of deceased bond owners to apply for proceeds from bonds, or related checks.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,965.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 991.

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.

Dated: December 4, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–31180 Filed 12–10–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application by Voluntary Guardian of Incapacitated Owner of United States Savings Bonds/Notes.

DATES: Written comments should be received on or before February 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@pbd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application by Voluntary Guardian of Incapacitated Owner of United States Savings Bonds/Notes.

OMB Number: 1535–0036.

Form Number: PD F 2513.

Abstract: The information is requested to establish the right of a voluntary guardian to act on behalf of an incompetent bond owner.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,650.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 2,600.

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.

Dated: December 4, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–31181 Filed 12–10–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Description of United States Savings Bonds/Notes and Description of United States Savings Bonds Series HH/H.

DATES: Written comments should be received on or before February 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or Vicki.Thorpe@pbd.treas.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Titles: Description of United States Savings Bonds/Notes and Description of United States Savings Bonds Series HH/H.

OMB Number: 1535–0064.

Form Numbers: PD F 1980 and PD F 2490.

Abstract: The information is requested to establish the owner of savings bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 19,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1,900.

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.

Dated: December 4, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–31182 Filed 12–10–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application for Relief on Account of Loss, Theft, or Destruction of United States Savings and Retirement Securities and Supplemental Statement Concerning United States Securities.

DATES: Written comments should be received on or before February 11, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@pbd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Titles: Application For Relief on Account of Loss, Theft or Destruction of United States Savings and Retirement Securities and Supplemental Statement Concerning United States Securities.

OMB Number: 1535–0013.

Form Numbers: PD F 1048 and PD F 2243.

Abstract: The information is requested to issue owners substitute securities or payment in lieu of lost, stolen or destroyed securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 26,400.

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.

Dated: December 4, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing, and Records Branch.

[FR Doc. 02–31183 Filed 12–10–02; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Wednesday,
December 11, 2002

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1915

Fire Protection in Shipyard Employment; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket S–051]

RIN 1218–AB51

Fire Protection in Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing fire protection standards for shipyard employment that were developed through a negotiated rulemaking process. This proposed standard is based on the recommendations of the Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee and is a comprehensive standard for the protection of shipyard employment workers from the hazards of fire on land side and on board vessels. The proposed standard reflects new technologies and current national consensus standards. The proposal collects all fire-related safety practices into a single subpart, which will make them more accessible and more easily understood by employers and employees. The standard will provide increased protection of shipyard employment workers from fire hazards.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or sent) by March 11, 2003.

Facsimile and electronic transmission: Your comments must be sent by March 11, 2003. (Please see the **SUPPLEMENTARY INFORMATION** provided below for additional information on submitting comments.)

ADDRESSES: Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. H–011G, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket No. H–011G, in your comments.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.*

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Ms. Bonnie Friedman, OSHA, Office of Information and Consumer Affairs, N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For additional copies of this **Federal Register** notice, contact OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC, 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's web page on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this notice by (1) hard copy, or (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage. Please note that you cannot attach materials, such as studies or journal articles, to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202)–693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service. All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the address above. Comments and submissions posted on OSHA's Webpage are available at *http://www.osha.gov.* OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office at (202)–693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions.

Table of Contents

This Preamble to the proposed standard is organized into the following sections:

I. Background
II. The Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee
III. Pertinent Legal Authority
IV. Summary and Explanation of Proposal
V. Summary of the Preliminary Economic and Initial Regulatory Flexibility Screening Analyses
VI. OMB Review under the Paperwork Reduction Act of 1995
VII. Public Participation
VIII State Plan Standards
IX. Federalism
X. Unfunded Mandates
XI. Authority and Signature

I. Background

Employees in shipyard employment are subject to a high risk of injury and death from fires and explosions during ship repair, shipbuilding, shipbreaking, and related work activities as well as firefighting activities. Many of the basic tasks involved in shipyard employment (also referred to as just ''shipyards'' hereafter), such as welding, grinding, and cutting metal with torches, provide an ignition source for fires. There are also many combustible sources on vessels and in shipyards, including flammable fuels and cargo on vessels, wood structures, building materials, and litter. When cutting torches are used in enclosed or confined spaces, accidental oxygen-enriched atmospheres can cause normally fire resistant-materials to readily burn. When fires do occur, employees are often working in confined or enclosed spaces that may make escape difficult or impossible, and result in atmospheres of combustible gases, toxic fumes, or oxygen-depleted air.

Shipyard employees are therefore at risk from fires that can result in burns, death, explosions, toxic gases and fumes, and asphyxiation from a lack of oxygen. Based on data collected by the Bureau of Labor Statistics, there is an annual average of one fatality, 110 lost-workday ''heat/burn'' injuries, and more than three times that many total injuries (Ex. 15).

In addition, employees are also at special risk when fighting fires in shipyards. Fighting fires at shoreside facilities in shipyards can be similar to structural firefighting at typical industrial manufacturing facilities. The usual firefighting hazards encountered include compressed gas cylinders, flammable liquid processes and storage, high-voltage electric switches and transformers, and high-density combustible materials storage.

Structures at shipyards can range from single-story office buildings to warehouses to massive fabrication shops. Fires can also be encountered in tunnel sections, rail cars, vessel components, and similar units under construction, repair, or demolition at the shipyard site.

However, firefighting on board vessels can be considerably different from structural firefighting. When traditional structural firefighting techniques are used on vessel fires, the result can be catastrophic. The potential is much greater for serious injury to firefighting personnel when tactics do not reflect the unique nature of ship firefighting. For example, there may be little or no ability to ventilate the heat, smoke, and gases produced by a fire. Typically, in structural firefighting, immediate steps are taken to open up the structure, vertically and horizontally, to remove smoke and heat. Hose lines are then used to attack the fire. When fighting a ship fire, one of the first steps that may be taken is to shut down ventilation systems to close off the fire's progression and starve it of oxygen. Hose lines are used to cool down surrounding metal decks and bulkheads. A defensive fire-fighting option for large or intense structural fires is to ''surround and drown'; that is, position hose lines outside the structure and apply voluminous amounts of water until the fire goes out. Strategic options for vessel fires are very limited and nearly always require an aggressive interior attack. Small shipyards have outside fire responders. These municipal or other fire departments may not have much experience in fighting fires in shipyards or, especially, on vessels. Proper coordination, familiarization, and training is necessary to ensure the safety of outside firefighters who respond to shipyard fires.

Vessel fires are also more complicated because, in most cases, outside firefighters seldom have the opportunity to learn the layout of the vessel. Vessels under construction or modification have constantly changing structures. Firefighters, operating under adverse conditions caused by heat and smoke, can easily become disoriented or confused. Access to the vessel may be restricted by its location, such as within a dry dock, meaning that firefighters boarding the ship will have to converge on one or two access locations. This can lead to congestion of personnel and delays in locating and extinguishing the fire. Access can also be restricted by equipment, tools, vessel components, and structures. Staging platforms, scaffolding or rigging, cranes, and even mooring lines can hamper deploying hose lines and positioning apparatus, again causing delays and confusion. Even with unrestricted access to the vessel, deploying hose lines can be time-consuming and labor intensive. To attack a fire deep within a ship, firefighting hoses may have to be stretched hundreds of feet, a task that requires time and a lot of people.

Maintaining an adequate supply of air is another tactical problem for firefighting operations on ships. Firefighters will usually be equipped with self-contained breathing apparatus (SCBA) that optimally provide a 30-minute supply, after which the compressed air bottle will have to be refilled or replaced. Ship fire-fighting operations can last many hours; firefighters have to be rotated frequently to resupply their SCBA and counteract fatigue.

Ships' fires also present a problem firefighters do not often have to think about—introducing a large amount of water into the vessel, so much so that the vessel can become unstable and possibly capsize or sink. This potential problem requires consultation with experts (such as naval architects or U.S. Coast Guard engineers) to assure vessel stability.

Radio communication is another complicating factor common to fighting ship fires. Steel bulkheads and many compartments in ships effectively block and limit radio signal transmissions. To compensate, firefighters have to relay messages from within the ship by stationing personnel with radios close enough that transmissions can be sent and received. Other alternatives include using runners or deploying hard-wire communications systems. All possible solutions to this problem involve additional personnel, delays in establishing command and control, and increase the potential for mishaps.

Fires in shipyard employment present significant, serious hazards to those who work to control them. These hazards can be found in shipbuilding, as well as in shipbreaking and ship repair. Because firefighters must function on both land side and on board vessels, they need a single set of standards and training to do so safely. Likewise, other shipyard employees move from ship to shore frequently and need a single standard and training on alarms, evacuation, and the many other response actions.

OSHA's general industry standards for fire protection are in subpart L, CFR 1910.155 through 1910.165. The application of subpart L, CFR 1910.155(b), exempts maritime employments from coverage. Subpart L addresses typical land-side fire prevention and firefighting conditions (fire extinguishers, fixed extinguishing systems, *etc.*). OSHA compliance policy, set out in OSHA Instruction STD.2 addresses typical land-side fire hazards in shipyards. Since the Agency has no specific standards that address the risks of fire on board vessels and vessel sections, OSHA has used the General Duty Clause section 5 (a)(1) of the Occupational Safety and Health Act to cite fire safety hazards on both land-side facilities and on board vessels and vessel sections (also referred to as just ''vessels'' hereafter). To enforce the General Duty Clause, OSHA must show the existence of a hazard, that the hazard is recognized, that the hazard is causing, or is likely to cause serious physical harm to employees, and that a feasible means exists to abate the hazard. To demonstrate industry recognition and feasible abatement measures, OSHA has relied upon standards published by the Coast Guard and other branches of the Federal Government to identify hazards and abatement steps as well as guidelines developed by professional associations such as the National Fire Protection Association and the Marine Chemists Association.

The lack of a clear OSHA standard for fire protection on vessels, and the multiplicity of guidelines and standards from other sources that potentially apply to shipyards can result in uncertainty about, and gaps in, the safety requirements for employers in the shipyard industry. The Agency has preliminarily concluded that codifying relevant issues for fire protection in shipyards into a single subpart in CFR part 1915 will substantially clarify an employer's responsibilities in protecting shipyard employees from fire hazards. The Agency believes that this, in turn, will lead to better protection for these employees.

Simply extending application of the current general industry standards to shipyards would not be appropriate. First, most of the provisions in the general industry standards have been in effect since 1980. They would need revision to take into account technological advances that could improve fire protection in shipyard employment. These advances are recognized in the proposed new subpart P. Secondly, shipyard employment encompasses many tasks and worksites that are unique to the maritime industry. Employers, labor representatives and professional and trade associations have repeatedly asked OSHA to allow all shipyard employment to be covered by a single set of standards. They point out that the

work situations found within shipyard employment have more in common with each other than with those in general industry, and that the hazards and methods of controlling the hazards are similar throughout the shipyard. Finally, they point out that the work on land and aboard the vessels is located within the same area and performed by the same workforce. Fire protection services are usually provided by the same in-yard plant or out-of-yard fire crews to all areas of shipyard employment. OSHA's Negotiated Rulemaking Advisory Committee for subpart P (hereafter ''the Committee'') concluded that when fire response crews find shipyard employment sites following the same standard, the crews are more effective in their fire response activities. OSHA agrees and has preliminarily concluded that a single new standard addressing fire hazards for all shipyard employment, on land and on board vessels, is reasonably necessary and appropriate to protect shipyard employees.

The Agency has also preliminarily concluded that there is a significant risk to employees of material impairment from fires, explosions, and fire-related accidents causing death, burns, and injuries related to fire and fighting fires. OSHA further concludes that the proposal's requirements for inspections before beginning hot work, fire watches, fire planning, training, and other provisions will help save lives and prevent injuries. Proposed subpart P will substantially reduce this risk of fire by recognizing and, in some cases, requiring new technology.

OSHA established the Shipyard Employment Standards Advisory Committee (SESAC) in 1990. SESAC was formed to guide OSHA in revising, consolidating, and modernizing the varying sets of rules that were being applied in the shipyard employment industry into what would ultimately become a single comprehensive set of standards for all shipyard employment. The new shipyard employment standards would apply to all shipyard employment, regardless of geographic location. In 1991 SESAC began work on standards on fire protection for all shipyard employment. The SESAC Subcommittee on Fire Protection, after reviewing pertinent federal regulations and guidelines issued by professional associations, drafted a shipyard employment fire protection standard (SESAC, Ex. 9). However, not all of its provisions were written in regulatory language and the provisions did not address all of the issues that need to be considered in an OSHA rulemaking.

The shipyard employment workgroup of the Maritime Advisory Committee on Occupational Safety and Health (MACOSH) briefly discussed fire protection and negotiated rulemaking at its September 1995 meeting in New Orleans, Louisiana. Members urged OSHA to proceed with a fire protection standard, although some members suggested the MACOSH shipyard employment workgroup take up the fire protection issues if OSHA was unable to do a fire protection negotiated rulemaking.

On June 6, 1996, OSHA announced its intent to establish a Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA)(61 FR 28824). The Committee would negotiate issues associated with developing a notice of proposed rulemaking to regulate fire hazards in shipyard employment. The Committee would be made up of representatives of the parties interested in, or affected by, the outcome of the proposed rule. OSHA asked interested parties to submit their nominations for membership or request representation on the Committee. The Agency planned public meetings for the Committee along the United States coastlines in an effort to provide small employers with the access they needed to participate in this rulemaking effort.

II. The Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee

Negotiated rulemaking is a process by which a proposed rule is developed through negotiation among a committee composed of representatives of all the interests that will be significantly affected by the rule. Negotiation allows interested parties to discuss possible approaches to various issues and arrive at jointly agreed or acceptable provisions for a standard. The negotiation process involves a mutual education of the parties on the reasons for different positions on the issues as well as on the concerns about the practical impact of various approaches.

The process is started by the Agency's identification of all interests potentially affected by the rulemaking under consideration. To help in this identification process, the Agency publishes a notice in the **Federal Register**, called ''an intent to negotiate,'' which identifies a preliminary list of interests and requests public comment. Also included in this notice is a statement that the Agency intends to negotiate and develop a proposed rule; a description of the subject and scope of the rule to be developed and the issues to be considered; a proposed agenda and schedule for completing the work of the committee; and even a possible list of persons who may be nominated.

After receiving comment, the Agency chooses an advisory committee of those nominated to represent these various interests. Representation on the committee may be direct, that is, each member represents a specific interest, or indirect, through coalitions of parties formed for this purpose. An Agency representative is a member of the committee, representing the Federal government's own set of interests. The negotiated rulemaking advisory committee is chaired by a mediator, who facilitates the negotiation process.

Once a negotiated rulemaking committee reaches consensus on the provisions of a proposed rule, the Agency, consistent with its legal obligations, uses this as the basis of its proposed standard, which is published in the **Federal Register**. This provides the required public notice and allows for a public comment period. Other participants and other interested parties retain their rights to comment, participate in an informal hearing (if requested), and seek judicial review. OSHA anticipates, however, that the pre-proposal consensus reached by the Committee will effectively narrow the number of controversial issues in the subsequent rulemaking.

The Negotiated Rulemaking Act of 1990 (5 U.S.C. 561 *et seq.*) (NRA) allows OSHA to establish a negotiated rulemaking committee if it is determined that using the negotiated rulemaking procedure is in the public interest. As noted above, OSHA has made this determination for this rulemaking activity. Each committee member participates in resolving the interests and concerns of other members instead of leaving it up to OSHA to bridge different points of view. A key principle of negotiated rulemaking is that agreement is reached by consensus of all the interests. The NRA defines consensus as unanimous concurrence among the interests represented on a negotiated rulemaking committee, unless the committee itself unanimously agrees to use a different definition of consensus.

The Agency determined that the selection criteria listed in the NRA were met, and that there was a need to issue fire protection requirements that would apply to all shipyard employment. Finally, parties representing significant interests requested that OSHA use the negotiated rulemaking process on subpart P and acknowledged the need for a new standard.

The members of the Committee are: Chris Myskowski, U.S. Coast Guard; Paul Jensen, NIOSH; Joseph V. Daddura, Office of Maritime Standards, Occupational Safety and Health Administration; G. F. Hurley, Norfolk Naval Shipyard; Richard Duffy, International Association of Firefighters (AFL–CIO, CLC); E.P. Kaiser , South Tidewater Association of Ship Repairs, Inc.; Guy Colonna, National Fire Protection Association; Russ Sill, Portland Fire Bureau; Alton Glass, United Steel Workers of America (AFL–CIO, CLC), who was later replaced by John Molovich; George Broussard, Bollinger's Shipbuilding and Ship Repair, who was later replaced by Mark Duley, Walker Boat Yard, Inc.; Glenn Harris, Ingalls Shipbuilding; Donald Mozick, Atlantic Marine, who was later replaced by Terry Guidry, Bollinger's Shipbuilding and Ship Repair; Michael Buchet, United Brotherhood of Carpenters and Joiners of America, who was later replaced by Joseph Durst; J.D. Paulson, National Steel & Shipbuilding Co., Peter Schmidt, Office of Specialty Compliance Programs, Washington State Department of Labor and Industry.

The first meeting of the Committee was held in Portland, Oregon, on October 15, 16, and 17, 1996, and was open to the public, as were all subsequent meetings. (All minutes and documents from the Committee meetings can be found in Exs. 5–1 through 5–. Minutes were recorded by OSHA staff for the Committee.) During this organizational meeting, the members were charged with their duties and procedural matters were addressed. The members adopted ground rules for the Committee and set forth substantive issues that needed to be resolved. The rulemaking process was explained in depth to the Committee members, so that they would understand their role in the process. SESAC's proposal on fire protection in shipyards was given to the Committee.

Several examples of firefighting were given by members of the Committee and discussions were held after each example, including how small businesses contact outside fire departments for assistance with firefighting. Workgroups were established for the following areas: Fire Watch, Safe Work Practices, Fire Response, and Fire Protection. These workgroups were charged with producing a draft regulatory text and rationale for their parts of the safety standard. These drafts were to include definitions and several options in areas where the members of the workgroup did not agree. The Committee agreed to include sea trials in the scope of this regulation. Also at this meeting, an overview and history of the SESAC Draft Proposed Standard for Fire Protection was presented by a member of SESAC's workgroup. The draft, text, and rationale of SESAC's recommendations were reviewed. As was to become routine at meetings, the Committee and other participants toured nearby shipyards. They were MarCom Inc., Vancouver, Washington (small shipyard); Diversified Marine Incorporated, Portland, Oregon (small shipyard); and Cascade General, Portland, Oregon (large shipyard).

The second Committee meeting was held in Jacksonville, Florida on February 4, 5, and 6, 1997. The Committee discussed several key issues: Should subpart P—Fire Protection for Shipyard Employment—apply to all shipyard employment? How will the standard affect out-of-yard/plant firefighters such as those employed by a municipal fire department? What controls and work practices will provide adequate protection for workers? Should OSHA require hot work permits? Should OSHA require training for all firefighters? Should OSHA incorporate U.S. Coast Guard regulations in this standard? Is there any difference in controls and work practices on land-side verses on board vessels and vessel sections? Should OSHA require the employer to secure (deactivate) all firefighting systems on board vessels when they arrive in the yard? Should OSHA require each shipyard to have an in-yard/plant fire brigade? Should OSHA require written fire plans for land side and on board vessels? If so, what provisions need to be included in the plans? Should OSHA include a requirement for de-watering (removal of firefighting water from the vessel) of vessels when fighting a fire on board a vessel? What advances in fire technology have occurred since OSHA's general industry standards were published that should be incorporated into the shipyard employment standard? Should OSHA include technical information in an appendix or appendices? If so, should appendices be mandatory?

The Committee had a lengthy discussion about OSHA's jurisdiction. OSHA has no jurisdiction over municipal firefighters, but states and territories with OSHA-approved State Plans are required to have standards for state, county, and local government entities that are at least as protective as Federal OSHA's.

Small employer representatives included: T.L. James & Company, Houma, Louisiana; Halter Marine, New Orleans, Louisiana; and Alabama Shipyard/Atlantic Marine, Mobile Alabama. A Chicago municipal firefighter also attended. Committee members and the public participants at this meeting took a tour of Atlantic Marine (small shipyard).

A Fire Watch section workgroup met at Charleston, South Carolina, on March 18, 1997. The workgroup was tasked with developing proposals to be presented to the full Committee. Discussions included the Navy's NAVSEA 00907 Fire Prevention and Housekeeping standard of September 13, 1996. The workgroup agreed that NAVSEA 00907 was not applicable to the safety of workers because its focus was on the protection of property. The workgroup also agreed on two proposals to present to the full Committee: That an employee performing hot work should never be his or her own fire watch, and that training requirements should be performance oriented. For example, for training employers could use stand-up tool-box safety meetings or written training documents as a basis for appropriate training sessions. Suggestions for identifying a fire watch included: Stickers on hats, arm bands, and vests. The topic of live-fire training was raised as an issue for the full Committee to consider.

The third public meeting of the Committee was held in Lockport, Louisiana, on April 8, 9, and 10, 1997 (Ex. 5–3). The Committee's workgroups continued working on the issues of scope and application, controls and work practices, fire brigades, written fire plans, technological advances in fire protection, costs of fire protection, and appendices. There were discussions about small employer difficulties and on Coast Guard jurisdiction over vessels during sea trials. Preliminary drafts of proposed changes and preamble language were circulated among committee members for review and comment. At this meeting the Committee decided that issues upon which general agreement could not be reached would be raised for public comment in the proposal's preamble. By doing so, an issue, such as live fire training, would be considered by the public and OSHA and could become part of a final rule. Small employer representatives in attendance were: Walker Boat Yard; Halter Marine; Leevac Shipyard; Boland Marine; and Bollinger Shipyard. The Committee members and other participants toured the Bollinger Lockport facility and two other Bollinger facilities in the area (small shipyards).

The fourth public meeting of the Committee was held in Baltimore, Maryland on July 15, 16, and 17, 1997

(Ex. 5–6). During this meeting the Committee broke out into its workgroups and continued to develop proposed preamble and regulatory text on the issues that were identified in previous meetings. OSHA staff explained the economic feasibility issues that are brought into rulemaking and gave a briefing on ''plain language.'' Carryover discussion items from the previous meeting were OSHA's lack of jurisdiction over civilian guests on board vessels during sea trials, municipal fire departments, and volunteers. The discussions produced several examples of current practices from members of the Committee.

There was a discussion about the hazards of fixed extinguishing systems and members gave examples of current practices. A large West Coast shipyard disconnects the vessel's system because they do not want it to be accidentally activated. A representative from small shipyard on the inland waterways noted that he prefers not to deactivate a vessel's fixed extinguishing system, especially for a short-term repair job. For this type of short-term repair job, the Committee agreed that there are two options: Disconnect the entire system or train employees. Some members indicated that on some manned Navy vessels, deactivating the fixed extinguishing system is not an option. It was also noted that, on U.S. flag vessels the U.S. Coast Guard requires a time delay on fixed systems to allow employees to evacuate before the extinguishing agent is released or automatic locking doors are activated. There was an incident in Spain where a small fire on board a vessel was under control locally when another employee pulled the fixed fire system, causing fatalities. A presentation was given on a fire aboard the *Melvin H. Baker II,* which occurred during a hot work operation and caused a fatality.

There was also a discussion of how a fire watch can alert others before he or she exits the dangerous areas, which fire watch duties should be included in safe work practices, and the important role of the fire watch in preventing fires and loss of life. A workgroup was established to work on the definitions section of the standard. Small employers were represented by: Bollingers Shipyard, Lockport, Louisiana, and the National Shipbuilders Association, Arlington, Virginia.

The fifth meeting of the Committee was held in Paducah, Kentucky, on October 7, 8, and 9, 1997 (Ex. 5–4). At the request of the Shipbuilders Council of America (SCA), OSHA staff held a preliminary meeting on October 6. This meeting was open to the public and SCA invited small employers to be present. OSHA staff made presentations on the negotiated rulemaking process, OSHA's standards writing process, and the intent of the proposed Fire Protection standard. The OSHA Project Attorney reviewed the ground rules for negotiated rulemaking procedures, and answered more specific questions that the Committee had raised, such as regulating small businesses. Some workgroups presented their draft documents for discussion and approval by the full Committee. Those documents that were approved by the Committee were delivered to OSHA for further action. Some of the other topics of discussion were: Sliding/rolling fire doors, inadvertent activation of a ship's CO_2 system, and live fire training. Small employer representatives in attendance were: Bollinger's Shipyard, Lockport, Louisiana; James Marine, Inc., Paducah, Kentucky; Cascade General, Inc., Portland, Oregon; Newpark Shipbuilding & Repair, Houston, Texas; Missouri Dry Dock, Cape Girardeau, Missouri; Mid South Towing, Metropolis, Illinois; Sea River Maritime; and American Commercial Marine Service Co. Unions representatives were present from Firefighter Local 168, Paducah, Kentucky and IBEW Local 733, Pascagoula, Mississippi. Committee members and the public participants toured two small shipyards, Walker Boatyard and James Marine, Inc., Paducah, Kentucky.

The sixth public meeting of the Committee was held in San Diego, California, on February 24, 25, and 26, 1998 (Ex. 5–5). Discussions at this meeting included the Small Business Regulatory Enforcement Fairness Act (SBREFA), the general industry (29 CFR part 1910) regulations that apply to landside operations, and live fire training for fire watches. During this meeting, the Committee approved the regulatory text on hot work. Small employer representatives at this meeting included: Bollinger's Shipyard, Louisiana; Walker Boat Yard, Kentucky; Sea River Maritime; and South Tidewater Association of Ship Repairers (STASR), Hampton Roads, Virginia. The Committee member representing STASR noted that the negotiated rulemaking issues and products are shared by the member with 121 STASR members, who are mostly small employers. Committee members and the public participants at this meeting took a tour of the NASSCO and the NAVAL shipyards.

The seventh meeting of the Committee was held in Linthicum, Maryland on June 15, 16, and 17, 1998 (Ex. 5–9). The Committee decided that since MACOSH has supported the Committee and intends to review its products, the Committee's recommendation for a proposed standard will be made available to them. A lengthy discussion was held on shipboard fixed fire protection systems, during which the Committee members learned that only CO_2 systems have caused fatalities. This led to further discussion about whether or not an employer would rely on a vessel's fixed system as the primary source of fire protection., and prompted a page-by-page review of the fire response section. Topics discussed included the term ''qualified instructor,'' personal protective equipment, hose testing, and how long records must be kept.

During the second day of this meeting, the Acting Director of OSHA's Office of Regulatory Analysis presented an overview of what requirements OSHA's economic analysis must meet. A representative from the Small Business Administration (SBA), Office of Advocacy also answered questions from the Committee and public on issues related to small businesses. After a review, the Committee voted to accept the preamble of shipboard fixed systems. The Committee further agreed to not bring sections of 29 CFR part 1910 over into 29 CFR part 1915 for land-side fixed systems, because members prefer that fire extinguishers, stand pipes, or sprinklers conform to NFPA 10, Standard for Portable fire Extinguishers, 1998 Edition (Ex. 20–1) rather than the older OSHA general industry standards for this type of equipment.

The issue of records retention was reviewed. It was agreed that the proposal will state that records must be kept and made available for one year; however, an issue will be raised on one year versus three years retention. Large shipyards typically keep their records indefinitely, but in the opinion of several of their representatives, they would rather not be told how long records must be kept.

Small employer representatives at this meeting included: Bollinger's Shipyard, Louisiana; Walker Boat Yard, Kentucky; and South Tidewater Association of Ship Repairers, Hampton Roads, Virginia. A representative from National Shipbuilders Association, Arlington, Virginia, also attended.

The eighth meeting of the Committee was held in Biloxi, Mississippi, on September 9, 10, and 11, 1998 (Ex. 5–7). Topics of discussion included the progress that the definitions workgroup was making and the outreach programs previously completed. The public was polled about their expectations from

this negotiated rulemaking on fire protection. Other discussions were held on what to do with burning torches, what the extent of the standard was, where fire watches are not needed, and how to ensure that the 29 CFR part 1910 requirements are updated and that they cover the same work as subpart P.

The following list of issues was distributed and discussed by the Committee: Can a fire response count as a drill? Is the inspection required in the proposal's section 504(a) and (b) already covered in 1915.14, or does the proposal mandate that all areas—other than those that require a Marine Chemist or Shipyard Competent Person's inspection—be inspected before hot work? In section 505, Fire Response, should OSHA require proximity firefighting protective clothing for all yards and fire departments? Should an employee have the right to stop work if the employee felt he or she was placed in a dangerous situation? Does the committee want to require the employer to instruct on-site contractors on their fire plans? What is an ''authorized area?'' Is a welding shop, sheet metal shop, fabricating shop, or subassembly area to be considered an authorized area? If so, does the Committee want the employer to post signs to notify employees? How does the employer determine the authorized area? Is it the Committee's understanding that the employer is to survey his shipyard to determine and label all working areas? How is the issue of municipal fire departments' response to shipyard fires to be explained in the preamble? How can the Committee ensure that the public understands that this standard does not apply to state, county, or municipal fire departments?

Other issues discussed included: Proximity suits; a model training program for fire watches; employee participation; fire watch training; the requirements of subpart B, Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, that could apply in the hot work section; training requirements for all shipyard employees versus training only fire watches; liaisons between shipyards and outside fire responders; and the proposed requirement that all fire hoses used by the employer being labeled, tested, and maintained in accordance with NFPA 1962–1998 Standard for the Care, Use, and Service Testing of Fire Hose Including Couplings and Nozzles, 1998 Edition (Ex. 20–2). The Committee agreed on the regulatory text of proposed §§ 1915.505 and 1915.506.

A small shipyard representative requested that OSHA have an extended compliance date for employers with 250 or fewer employees. Shipyards with more than 250 employees typically have a full-time designated safety and health professional, based on the experience of the National Shipbuilders Association. A labor representative opposed the request for a delay in implementation for small employers. It was suggested that OSHA review the issue for its proposal.

Small employers were represented at this meeting by Bollinger Machine Shop & Shipyard, Inc., Louisiana; Walker Boat Yard, Kentucky, South Tidewater Association of Ship Repairers, Hampton Roads, Virginia; National Shipbuilders Association, Arlington, Virginia; First Wave Marine, Houston, Texas; Bender Shipbuilding, Mobile, AL; and Omega Shipyard, Moss Point, Mississippi.

The ninth meeting of the Committee was held in Houston, Texas, on February 5–7, 2002 (Ex. 5–8). OSHA staff incorporated the agreed upon changes made during this meeting into the Committee's working document. A motion was made for a full Committee vote on the document. The Committee unanimously approved, agreeing on all the issues and topics. A reworked package of the regulatory text including section number changes with training in its own section was mailed to the Committee March 2002.

Small employers were represented at this meeting by Bollinger Machine Shop & Shipyard, Inc., Louisiana and Texas; Walker Boat Yard, Kentucky; South Tidewater Association of Ship Repairers, Hampton Roads, Virginia; National Shipbuilders Council, Washington, D.C.; First Wave Marine, Houston, Texas; Trinity Marine Products; Moon Engineering, Co., Portsmouth, Virginia; and Atlantic Marine/Alabama Shipyard.

Informal meeting minutes were provided by OSHA staff for all meetings. These minutes were approved by the Committee and included in OSHA's Docket S–051 (Ex. 5). The Agency has taken the Committee's recommendations for a proposal for fire protection in shipyard employment and editorially revised them into the proposed standard that follows this preamble.

III. Pertinent Legal Authority

The purpose of the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.* (''the Act'') is to ''assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources' (29 U.S.C. 651(b)). To achieve this goal, Congress authorized the Secretary of Labor to issue and enforce occupational safety and health standards. (*See* 29 U.S.C. 655(a) (authorizing summary adoption of existing consensus and federal standards within two years of the Act's enactment), 655(b) (authorizing promulgation of standards pursuant to notice and comment), 654(b) (requiring employers to comply with OSHA standards).) A safety or health standard is a standard ''which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment.'' 29 U.S.C. 652(8).

A standard is reasonably necessary or appropriate within the meaning of section 652(8) if it substantially reduces or eliminates significant risk; is economically feasible; technologically feasible; cost effective; is consistent with prior Agency action or is a justified departure; is supported by substantial evidence; and is better able to effectuate the Act's purposes than any national consensus standard it supersedes. See 58 FR 16612–16616 (March 30, 1993).

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. *American Textile Mfrs. Institute* v. *OSHA* 452 U.S. 490, 513 (1981) (''ATMI''), *American Iron and Steel Institute* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir 1991) (''AISI'').

A standard is economically feasible if industry can absorb or pass on the cost of compliance without threatening its long term profitability or competitive structure. *See ATMI,* 452 U.S. at 530 n. 55; *AISI,* 939 F.2d at 980. A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *ATMI,* 453 U.S. at 514 n. 32; *International Union, UAW* v. *OSHA,* 37 F.3d 665, 668 (D.C. Cir. 1994) (''LOTO II'').

Section 6(b)(7) authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing and other information gathering and transmittal provisions. 29 U.S.C. 655(b)(7).

All standards must be highly protective. *See* 58 FR 16614–16615; LOTO II, 37 F.3d at 668. Finally, whenever practical, standards shall ''be expressed in terms of objective criteria and of the performance desired.'' Id.

IV. Summary and Explanation of Proposal Rule

Section 1915.501 General Provisions

In paragraph (a), OSHA states that the purpose of this standard is to require employers to protect all employees from fire hazards in shipyard employment, including employees engaged in fire response activities.

Paragraph (b) describes the scope of the proposal, which is all shipyard employment work, including work on vessels and vessel sections and land-side operations, regardless of geographic location. The scope of this subpart is consistent with that in the maritime standards' subpart B Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment and subpart I Personal Protective Equipment for Shipyard Employment. Fire response provided by the employer's workers, whether they be part of a fire brigade, shipyard fire department, or simply designated by the employer, is within the scope of this standard. There are several reasons for including all shipyard employment in the scope of this standard: (1) The requirements are tailored to the unique risks in shipyard employment; (2) subpart P will provide a single source of standards for fire protection that will be easier for training and to understand than multiple sources or sets of rules; (3) a comprehensive standard, referencing part 1910 where necessary, will be applicable throughout shipyard employment addressing hazards associated with fire watch situations, ship fire suppression systems, fire response procedures and landside fire operations.

OSHA has preliminarily concluded, and the Committee agrees, that a comprehensive standard applying to all shipyard employment operations will be highly protective of shipyard employment workers working on vessels, vessel sections, or landside operations and offer the best protection against fire hazards.

Shipyard employment can consist of shipbuilding, ship conversion, ship repairing or shipbreaking, and related employments. Shipyards may be dedicated to one type of work, such as new ship construction, or a shipyard may perform any or all types of shipyard work. The construction of a new vessel may be a single project or may involve separate fabrication of key components which are then joined together. Vessel sections may be fabricated on land within the shipyard, or may be built in specialty facilities inland of the shipyard and then transported to the yard. The scope must have broad coverage because shipyard employers increasingly engage in non-traditional shipyard employment such as steel fabrication of products not directly related to ships. This could include work such as construction of railroad cars, bridges, tunnel sections, smoke stacks, and boilers. It could also include operations performed during the final outfitting of vessels under construction or repair. Examples of such operations include technical support from the providers of shipboard electronic equipment as well as suppliers of internal furnishings. It does not include shoreside support services, such as those provided by vending equipment and mail delivery companies. The Agency is also proposing that any fire brigade, shipyard fire department, contracted outside fire response organization, or federal fire response organization be covered by this subpart if the responder is located at or responds to shipyard employment facilities. OSHA recognizes that a number of small employers perform vessel repair in non-traditional shipyards and intends to cover them.

Ship repair work could involve replacing damaged hull sections, outdated systems or components, or modifying a vessel to increase its capacity or change its designed purpose.

Shipbreaking could consist of the partial removal of vessel components or it could be the complete dismantling of a vessel (also known as ''scrapping'') for the salvage value of its parts.

Shipyard employment can also consist of support operations necessary for vessel construction and repair. Metal fabrication, machine shops, electrical and paint shops are typical facilities that can be found within a shipyard. Many vessel sections and vessel components are built in these shops more easily than they can be built on board a vessel. The materials are the same and often the hazards encountered are similar.

Shipyard employment also occurs on vessels and vessel sections within the navigable waters of the United States. The provisions of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.*, only applied to shipyards. Under the OSH Act, jurisdiction was extended to include workers wherever they were working.[1]

OSHA has included the phrase ''regardless of geographic location'' in the scope so that protection is afforded employees wherever they work: On vessels, vessel sections, land side, or any other location they are sent to by their employers. This has been Agency policy on shipyard employment and is in the scope of both subparts B and I.

The Committee also urged OSHA to cover work in the traditional shipyard and dock as well as on vessels during sea trials or at anchor. At the Portland, Oregon, meeting, the Committee noted that most ships on sea trials are still under construction with shipyard workers on board. At the Baltimore, Maryland, meeting, Committee members reviewed OSHA Instruction CPL 2–1.20, ''OSHA/U.S. Coast Guard Authority Over Vessels,'' dated November 8, 1996. Particular attention was given to paragraph I which delineated geographical considerations for enforcement over all vessels. The CPL states that ''OSHA only has authority over vessels when they are operating within the limits of State territorial waters.'' It goes on to define those waters as extending three nautical miles seaward from the coast line of coastal States, ''except for the Gulf Coast of Florida, Texas and Puerto Rico where the territorial waters extend for 3 marine leagues (approximately 9 nautical miles).''

The Committee concluded that the fire hazard exposure to workers is significant, whether a vessel or part is being constructed, repaired, or broken up and whether it is in the shipyard or dockside, at anchor, or underway for testing. Therefore, the requirements proposed in this subpart would apply broadly, including vessels underway within OSHA's jurisdictional boundaries, or at anchor, dockside, in dry dock, or on land.

In paragraph (c) of § 1915.501, OSHA seeks to encourage employee participation in shipyard safety and health program activities. OSHA proposes that the employer must provide ways for employees and employee representatives to participate in developing and periodically reviewing programs and policies adopted to comply with this standard. At the September 10, 1998, meeting held in Biloxi, Mississippi, the Committee recommended regulatory text regarding employee participation and involvement. The Committee saw this as a crucial component of the

[1] *See* 29 CFR 1910.11(b). The LHWCA limitations on coverage that appear in the maritime standards were not adopted under section 6(a) of the OSH Act, 29 U.S.C. 655(a). *See also* the preamble for the rulemaking in which the shipyard employment standards were consolidated, 47 FR 16986 (April 20, 1982). This OSHA policy was accepted by the Occupational Safety and Health Review Commission in *Dravo Corporation,* 10 BNA OSHC 1655 (No. 14818, 1982.) *Contra Dravo Corporation* v. *OSHRC & Marshall,* 613 F.2d 1227 (3rd Cir. 1980).

proposed standard and OSHA agrees. This proposal is consistent with the Department of Labor's policy to involve employees in decision-making processes affecting safety and health at their worksites.

Paragraph (d) of the proposed fire protection rule sets minimum requirements for exchanging information and coordinating responsibilities for fire protection among host and contract employers. These requirements are fundamental to any effective fire safety program on a multi-employer worksite.

A multi-employer workplace is defined for the purposes of this rule as a workplace where there is a host employer and at least one contract employer. This proposed requirement is necessary because the existence of additional employers and their employees at a workplace makes addressing safety and health conditions at the workplace more complex. For example, at a multi-employer worksite, one employer may introduce hazards into the workplace that employees of other employers may not know about. All employers need information about hazards present at the worksite to enable them to fulfill their obligations to protect workers. For these reasons, communication and coordination among employers are essential.

Failure to communicate about hazards between employers and their employees can be tragic. For example, the 1989 explosion at a Phillips 66 chemical complex in Houston, which killed 23 people and injured more than 100 workers, resulted largely from the failure to coordinate safety and health activities on a multi-employer worksite. A Department of Labor/OSHA 1990 report to the President concerning this catastrophe concluded:

> The catastrophe at the Phillips Complex not only emphasized the need for effective implementation of good safety management systems in the petrochemical industry but also raised questions about diffused responsibility for employee safety at worksites where one or more contractors are engaged in work for a company. OSHA had addressed this issue at construction sites, but not at petrochemical plants like the Phillips Complex, where a contractor was regularly employed to perform key maintenance operations and was directly involved in the October 1989 disaster (Ex. 10–5).

Events like the Phillips explosion and the increased reliance on using contractors throughout the shipyard industry have led OSHA to conclude that responsibility for fire safety must be specifically assigned to all employers, who must then be held accountable for discharging those responsibilities.

The need for and benefits of coordinating activities and exchanging information on multi-employer worksites are widely recognized, and requirements such as those being proposed here have been implemented in many workplaces throughout general industry, construction, and maritime industries. For example, the Chemical Manufacturers Association (now the American Chemistry Council) and the American Petroleum Institute state that improved occupational safety and health performance is one benefit that occurs when owners and contractors work together to enhance the management of contractor-related safety and health programs. Similarly, the National Safety Council has observed that ''a strong partnership between [host and contract employers] can reduce or eliminate risks, injury, and illnesses; help control health and insurance costs; and improve employee production and morale.'' In the shipyard industry it is common practice to hire contractors for nonroutine or specialized work situations. For example, painters, joiners, carpenters and scaffolding contractors are routinely used in shipyard employment.

The requirement for host and contract employer coordination and for the exchange of information about safety and health conditions on multi-employer worksites is consistent with Congress' desire that employees be informed of the hazards to which they are exposed. (Sections 6(b)(7) and 8(c)(1) of the OSH Act.) Employees can only be informed of the hazards to which they are exposed if information about such hazards is communicated among employers on multi-employer worksites. Such an exchange of information is also necessary to make sure that all hazards in the workplace are identified and that the responsibility for controlling them and protecting employees can be appropriately allocated among all employers on the site.

Under the proposal host employers must inform all employers at the work site about the contents of the host's fire safety plan—including hazards, controls, and emergency procedures—and assign any appropriate responsibilities for fire safety to other employers. The Committee is in agreement with this approach to multi-employer worksites (Ex. 5–8). The employer representatives on the Committee felt that the shipyard should not be responsible for training contractors.

In § 1915.509 Definitions, the host employer is defined as an employer who is in charge of coordinating work or hiring other employers to perform work at a multi-employer worksite. Proposed § 1915.501(d)(1) establishes the responsibilities of host employers. First, host employers must make sure that information about fire hazards, controls, safety and health rules, and emergency procedures is given to all the contract employers. The information includes whatever a contract employer must have to carry out his or her own duties as an employer under this rule. Contract employers need to inform employees of the fire hazards to which they are exposed at that worksite, the controls in place to reduce or eliminate those fire hazards, the safety and health procedures to be followed, and the steps to be taken in a fire emergency. Second, host employers must ensure appropriate fire safety and health responsibilities are assigned to contract employers at the worksite.

Contract employers must know about other hazards related to fire their employees may encounter at the workplace. Such knowledge allows contract employers to effectively plan and safely carry out their work and understand procedures, such as what to do when a fire alarm is sounded to evacuate a vessel. This information lessens the likelihood that accidents will occur. A host employer's workplace may have fire hazards of many kinds: toxic chemical, flammable or combustible liquids or dusts, electrical hazards, fall hazards, pressurized systems, confined spaces, and many more. Under this standard host employers must inform contract employers of the hazards related to fire they are likely to encounter to enable them, in turn, to protect their employees.

The Committee recognized that in the event of a fire emergency, contract employers must be able to take appropriate actions to protect their employees. Therefore, OSHA requires the host employer to make sure that all appropriate information about fire safety and evacuation procedures is conveyed to all contract employers working in shipyard employment.

OSHA is also requiring in paragraph (d)(1)(ii) that the host employer make sure that fire protection responsibilities are specifically assigned to the various employers working at a multi-employer worksite. The host employer must make sure that fire safety and health responsibilities are assigned as appropriate to other employers at the worksite. Some of these responsibilities include fire hazard abatement, informing employees of fire hazards before exposure, and stopping work because of an imminent danger

situation. A host employer might assign a contract employer the responsibility of preventing employees (other than the contract employer's employees) from being exposed to a hazard generated by the contract employer. For example, the host employer might require the contract employer to control the area around a painter to ensure that hot work is not permitted while painting is in progress. More generally, the host employer must, in conjunction with the contract employers, decide who is to train employees and control which hazards. The need to coordinate across organizational lines on a multi-employer worksite makes the clear assignment of responsibilities across those lines essential to achieve the overall goal of reducing employee exposure to potential fire hazards.

The proposed definition of ''contract employer'' in § 1915.509 Definitions is an employer who performs work under contract for a host employer or to another employer under contract to the host employer at the worksite. This definition specifically excludes employers who provide incidental services that do not influence shipyard employment (such as mail delivery or office supply services). The Agency recognizes that many vendors who work under contract to host employers do not engage in work that exposes their employees to the job-related hazards present at the site and do not themselves introduce new hazards to the site. This definition also makes sure, however, that contract employees engaged in work operations that do place them at risk, such as temporary labor (*e.g.* tank cleaners), blasting, and paint contractors are protected by the proposed provisions regarding multi-employer worksites.

As noted in this discussion, OSHA has provided additional definitions of ''host employer'' and ''contractor employer'' in order to help clarify multi-employer worksite provisions. In other places, the term ''employer,'' which is already defined in 29 CFR part 1915, is used to describe duties that are generally the host employer's as the employer with control of the overall worksite. We believe the intent of this approach is clear. The host employer has overall responsibility for fire protection at the worksite. However, in order to have effective fire protection, all employees on the site need to be aware of the hazards and the procedures established to deal with fires, regardless of who employs them. And all of the hazards on the site need to be identified and controlled, regardless of which employer has introduced the hazard to the workplace. Thus the provisions of the standard anticipate that an exchange of information will be required to ensure that fire protection is handled in a comprehensive and effective manner, and any necessary coordination of activities will occur. The Agency invites input on these terms and the way they are used in the proposed rule. Is it clear which employer is responsible in all of the proposed provisions? Is there another way to define or clarify which employer has responsibility for implementing the requirements?

The Agency is considering dropping the phrase ''safety and health rules,'' in paragraph (d)(i) that refers to the contents of the fire safety plan and dropping the phrase ''safety and health'' in reference to contract employers' responsibilities for fire protection activities in paragraph (d)(ii). The Agency has concluded that the reference to ''health'' or ''safety and health'' rules or responsibilities is confusing and vague in the fire safety proposal and that the scope of issues should be confined to fire safety.

Paragraph (d)(2) of § 1915.501, sets forth the proposed responsibilities for contract employer's. The contract employer must inform the host employer of any fire hazards that could be created by the work being performed by his or her employees, and what steps the contract employer must take to address those hazards. In addition, OSHA proposes that any hazards that were not identified by the host employer, but were identified by the contract employer, must be shared with the host employer.

Proposed paragraph (d)(2)(i) requires contract employers to make sure that the host employer is aware of the fire related hazards presented by the contract employer's work and how the contract employer is addressing them. The work performed by contract employers is commonly beyond the knowledge and expertise of the host employer and typically is not a part of the host employer's routine work. Contract employers are often hired precisely because they have special expertise. They offer a wide range of services, such as equipment repair and maintenance, blasting, painting, atmospheric testing of spaces, tank cleaning, and selected scaffold erection. Consequently, their work can present a set of hazards that are unfamiliar to the host employer. For these reasons, OSHA believes that the proposed rule must include minimum requirements for contract employers on multi-employer workplaces to report fire hazards to host employers. Proposed paragraph (d)(2)(ii) requires that contract employers advise host employers of any fire hazards unidentified by the host employer. In the course of his or her work, the contract employer may create or uncover fire hazards. The host employer must be made aware of all of the hazards, regardless of who created them, to enable him or her to coordinate the management of safety and health at a given multi-employer worksite.

Section 1915.502 Fire Safety Plan

The requirements for fire safety plans contained in this section were developed by the Committee based upon their combined professional experience and current industry practices. OSHA concurs with these recommendations. OSHA does not have any requirements for fire safety plans in its current standards.

The Committee recommended a program that would establish the location, type, and capacity of firefighting equipment such as extinguishers, fire hose and stand pipes, smoke detectors, automatic sprinklers, and other fixed firefighting systems in accordance with applicable fire codes. The plan must provide for the routine inspection, maintenance, and replacement of this equipment and mandate training for new workers and refresher training for all shipyard employment workers. Routine fire prevention inspections would be conducted by knowledgeable personnel with authority to correct deficiencies. The program would establish: Effective fire prevention measures for control of flammable and non-flammable compressed gases; identification and the control of ignition sources; the control of combustible materials; welding and hot work procedures and designated locations covering all operations (in addition to locations where hot work is authorized); and designated emergency evacuation routes and procedures.

The Committee felt that such a plan must be written. A written plan would enable employers and employees to see how the employer intends to protect workers; enable employers to readily exchange information; provide continuity of procedures; and would provide a practical means of communication to fire response organizations. Updating the plan to reflect changing fire control technology or changing the plan to reflect different fire hazards in different work situations is readily accomplished with a written plan. The Committee rejected the notion of verbal exchange as the equivalent of an established written fire safety plan.

In paragraph (a) of § 1915.502, OSHA proposes that the employer develop and implement a written fire safety plan that covers all the actions that employers

and employees must take to ensure employee safety in the event of a fire. OSHA is also proposing to include a note to the paragraph referring readers to a model fire safety plan that is included as Appendix A, a non-mandatory appendix to this subpart.

Appendix A contains a suggested outline for a model fire safety plan that employers could follow. Members of the small business community who participated in Committee negotiations strongly recommended that OSHA offer guidance for developing a fire safety plan. The purpose of the proposed appendix is to give guidance to any employers who may not have the expertise available to develop their own plan. If an employer chooses to use the model plan for a specific worksite, following the outline and addressing particular conditions at his or her specific worksite would meet the minimum requirements of this section.

In paragraph (b) of § 1915.502, OSHA sets forth the elements that the employer must include in the fire safety plan. They are: The identification of significant potential fire risks; procedures for recognizing and reporting unsafe conditions; alarm procedures; procedures for notifying employees of a fire emergency; procedures for notifying fire response organizations of a fire emergency; procedures for evacuation; procedures to account for all employees after an evacuation; and the names, job titles, or departments for individuals who can be contacted for further information about the plan. The Committee identified these elements as essential components that every effective plan must have. The Committee was particularly anxious for the alarm procedures to address the distinctive signaling devices and how they will be used to alert employers of fire and evacuation in a particular shipyard. The Committee and OSHA recognized that each shipyard may have its own unique alarm systems (*e.g.*, steam whistles, intercom, bells).

In paragraph (c) of § 1915.502, OSHA proposes that the employer must review the fire safety plan with each affected employee within 90 days of the effective date of this standard for employees who are currently working; upon initial assignment for new employees; and whenever the actions the employee must take under the plan change because of a change in duties or a change in the plan.

Paragraph (d) of § 1915.502 reflects the recommendations of the Committee. Consistent with that, OSHA proposes that the employer must also keep the plan readily accessible for review by employees, their representatives, and OSHA; review and update the plan whenever necessary but at least annually; certify in writing that each affected employee has been informed of the plan; and give a copy of the plan to any outside fire response organization that the employer expects to respond to fires at a worksite, regardless of geographic location. These requirements are necessary in order for the plan to be effective in protecting employees.

In paragraph (e) of § 1915.502, OSHA proposes as additional responsibilities for contract employers, compliance with the host employer's fire safety program. At any given time, because of the nature of the work, there may be many employers within one particular shipyard. The additional employers and employees cause an increase in safety and health hazards in the worksite. OSHA's intent with this paragraph is that all employers take responsible actions to reduce these hazards when possible, and to alert other employers when hazards exists. Recognition of hazards and response to emergencies in a safe manner requires all employers on the site to follow the host employer's fire safety plan.

Section 1915.503 Precautions for Hot Work

The purpose of this section is to reduce the potential of fire hazards and to reduce the frequency and severity of any fires resulting from hot work. Three elements are normally present for a fire to occur: an ignition source, oxygen, and a fuel source. If one element is removed, then a fire will not occur. The proposed requirements in this paragraph are intended to prevent the combination of these three elements from occurring at the same time.

The Committee's proposal focused on reducing the hazards associated with both the fuel sources as well as the ignition sources for fires. The Committee advocated removing any fuel source from the area where hot work was to be performed. If that is not possible, then isolating the fuels, using protection (shielding), or posting a fire watch can be used to comply with the provision. These requirements reflect current industry practices and the requirements associated with § 1915.14 for flammable and combustible materials within confined and enclosed spaces and other dangerous atmospheres. The Committee also identified other materials that may be present that have properties that may increase the hazards associated with a fire, such as oxidizers and water reactive chemicals. The Committee's proposal would require the employer to perform a hazard assessment as part of the decision-making process in authorizing hot work. The Committee concluded that fires resulting from hot work can be prevented through an authorization procedure and proper inspection of the worksite before hot work. This would involve identifying fire hazards and implementing appropriate control measures that include removing hazards, inerting spaces, shielding combustibles, or posting fire watches. The Committee believed this would be an innovative approach that protects shipyard workers from fire hazards while reflecting the best practices of the industry.

Following the Committee's recommendations, OSHA proposes that the requirements of this standard apply to all hot work operations in shipyard employment except those covered in subpart B of this part. The purpose of OSHA's proposed requirement is to make sure that the employer identifies all fire hazards in a hot work area. This section is also based upon requirements adapted from the existing § 1915.52 Fire Prevention, § 1910.252 Welding, Cutting and Brazing, and from an industry consensus standard, NFPA 51B–1998, Standard for Fire Prevention in Use of Cutting and Welding Processes (Ex. 20–3).

In paragraph (a)(1) of § 1915.503, OSHA is proposing that the employer, in designating areas for hot work, must determine that such areas do not contain potential fire hazards. The Committee recognized that there are areas within the shipyard that may not require an inspection before each hot work operation. These areas may, in fact, be designed for hot work. They include fabricating shops, sub-assembly areas, and welding and burning areas within shops, such as pipe, boiler, and sheet metal shops. These areas are examples of what the Committee considered to be ''Designated Areas'' along with certain areas on board vessels and vessel sections. In ''designated areas'' the hot work operations are regular and continuous as opposed to incidental operations occurring throughout the yard. Nonetheless, such areas must be initially inspected to establish them as ''designated areas'' and then maintained as such, as proposed in paragraph (b)(1) of this section.

The requirement for authorization of hot work in nondesignated areas is addressed in paragraph (a)(2) of this section. In paragraph (a)(2)(i) of § 1915.503, OSHA proposes that before authorizing hot work in non-designated area, the employer must visually inspect the area where hot work is to be performed, including adjacent spaces, to

identify potential fire hazards, unless a Marine Chemist's certificate or shipyard Competent Person's log is used for the authorization. The Committee recommended that this section include any area not covered by subpart B of this part. As mentioned earlier, OSHA is not addressing hot work in areas covered by subpart B Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment. This subpart already covers the hazards of performing hot work in these areas. Addressing them again in this subpart would be duplicative. OSHA believes that by requiring authorization before hot work in the non-designated areas, the employer will pre-plan the operation and thereby identify and control the hazards associated with hot work.

OSHA notes that although Marine Chemists and Shipyard Competent Persons have specific functions to perform under subpart B, this paragraph recognizes that the employer may also use them to assess and inspect both designated and nondesignated hot-work areas for potential fire hazards.

The Committee considered whether the authorization of hot work issued by the employer should be in a written form or whether a verbal authorization would give equivalent safety. Currently all shipyards handling repair or overhaul-type U.S. Navy contracts have written authorization procedures because Navy work requires authorization (hot work permits) as a standard item. On the other hand, shipyards that do not handle Navy contracts allow employees to perform hot work following either verbal or written authorizations. The Committee decided that shipyard employers should have the flexibility to decide what type of authorization is best suited for their hot-work operations. For example, in many cases associated with new construction, hot work is done with an authorization specifying that no special precautions are required and no written authorization (permit) is issued. The intent here is to enable the employer to perform the steps and to assess the hazard each time before authorizing the hot work, but not necessarily introduce the specification that requires a formal written permit. Therefore, in this paragraph OSHA does not specify what form of authorization must be issued.

In paragraph (a)(2)(ii) of § 1915.503, OSHA proposes that the employer be allowed to authorize employees to do hot work only in areas that have been visually inspected and found to be free of fire hazards or in inspected areas where fire hazards are controlled by physical isolation, fire watches, or other positive means such as inerting.

In developing the proposed language above, the Committee discussed under what circumstances the employer may authorize hot work on board vessels and vessel sections. Everyone on the Committee agreed that decisions about authorizing hot work on board vessels and vessel sections must be based on the inspection. When the inspection shows that there are no uncontrolled combustible or flammable materials in the area, then authorization for hot work is appropriate. The Committee also recognized that most of the mid-to large-size yards pre-outfit ship sections with electrical cables and fixtures, insulation, and other combustible materials requiring the employer to decide for each section what type of fire protection should be provided when hot work is to be done.

The likelihood of the hot work areas containing combustible materials during ship repair is greater than in shipbuilding. During ship repair, as in other work the employer must control the fire hazards prior to authorizing the hot work. Control, as required in paragraph (a)(2)(ii), can be by physical isolation, posting fire watches, or other positive means. For example, an employer can achieve physical isolation of combustibles by simply moving them to an area at least 35 feet away from the hot work (*see* definition of ''physical isolation''). The Committee discussed the 35-foot vertical and horizontal distance and found it to be consistent with current industry practice. Where combustibles can not be moved or otherwise physically isolated, the employer can post a fire watch to control the fire hazard. Additionally, when flammable atmospheres are found adjacent to the hot work area, the employer can control the fire hazard by inerting the adjacent space with a non-reactive substance that will not support combustion. For further information on controlling spaces (flammable atmospheres) adjacent to where hot work is being performed, *see* subpart B of this part.

Members of the public and shipyard representatives on the Committee commented during negotiations that the individual performing the hot work is usually expected to conduct his or her own final visual survey of the hot work area to make sure that conditions are safe for hot work. This is a common practice whether identified on a written permit or as part of the verbal authorization/assignment to the work. If the survey discovers unsafe conditions (*e.g.*, appreciable combustibles in an area, leaking lines of combustible liquids—hydraulic fluid, oil), then the worker will not initiate the work and will contact the individual authorizing the work for further instruction. It is also expected that work would not start until the situation was corrected. As explained by a Committee member, the employer is ultimately responsible for making sure that areas are inspected before hot work and that safe conditions are maintained throughout the hot work area. This may be done by requiring frequent inspection, training, or warning signs even when the employer has delegated the responsibilities for the inspections. OSHA has not proposed to require the hot worker to conduct a survey as the Agency believes the employer has the responsibility for determining if the area is safe. An employer may, of course, have such a survey as part of his or her work practices.

While subpart B has a requirement that a record be prepared by the Marine Chemist, Coast Guard Authorized Person, or Shipyard Competent Person allowing the hot work to be authorized as defined by § 1915.14, not all hot work areas need to be certified by a Marine Chemist or inspected by a Coast Guard Authorized Person or Shipyard Competent Person before the employer's authorization for hot work to begin. The employer may assign the authorization responsibility to other individuals who are knowledgeable in the hazards associated with hot work.

In paragraph (b) of § 1915.503, OSHA is proposing that the employer keep all hot work areas free of hazards that may cause or contribute to the spread of fire. This proposed paragraph summarizes the Committee's belief that fires cannot occur if the hazards contributing to them are controlled. This requirement is to prevent the introduction of combustible or flammable materials during the performance of hot work. Often, safe conditions exist at the start of the hot work process; however, over the duration of the work, these materials may be brought to the site thereby creating a fire hazard. For example, one worker may be performing hot work at the same time another worker from another job introduces combustible or flammable materials within 35 feet of the hot work operation. The worker's safety can be further compromised by the fact that the worker doing the hot work is wearing a face shield that obstructs vision, preventing that worker from seeing the entrance of the second worker. It is the intent of this requirement that hazard assessment be a continual process and not a singular, one-time event. Therefore any measures

used by the employer to control fire hazards must be maintained.

Fuel gas and oxygen burning lines and torches are typically used in shipyard employment as follows. A burner (an employee engaged in burning or brazing) is trained and becomes qualified in the safe operation and testing of his equipment; namely the burning torch, gauges, care and use of the fuel gas and oxygen hose lines and proper connection to the supply manifold. Only qualified employees are issued this equipment from the tool room. After being issued his equipment, a burner working on a vessel will proceed to the manifold on the fantail of the vessel. Assigned to work in the lower level of the machinery space (enclosed space) 200 feet from the manifold, he will connect four 50 foot sections of hose together and to his torch. Next, he will connect this assembly to the gauges that he, in turn, attaches to the supply manifold. He then charges the entire burning rig by opening the oxygen and fuel supply lines. He then tests the torch and lines for compression integrity using his gauges first having turned off the supply valves. If the gauges indicate compromised integrity, the burner will then re-tighten all of the connections and test again. Once the integrity of the burning rig is established, he then proceeds to roll out the lines on the deck to his assigned worksite. Upon reaching his worksite, he then returns to the supply manifold, energizes the system, and proceeds to secure his hose lines elevated and out of walkways to eliminate tripping hazards. Finally, he returns to his worksite and begins burning.

In paragraph (b)(2)(i) OSHA proposes that the employer must make sure that no unattended fuel gas and oxygen hose lines or torches are left in confined spaces. The proposed language in this paragraph has been adapted from 29 CFR 1910.252; § 1915.52; and NFPA 312–2000, Standard for Protection of Vessels During Construction, Repair, and Lay-up (Ex. 20–4). The Committee and participants from the public attending the Committee's meetings agreed with the proposed requirement in paragraph (b)(2)(i). This requirement reflects the current practice in the industry.

The potential danger associated with unattended fuel gas and oxygen hoses or torches in confined spaces is apparent and universally accepted. Leaking fuel gas and oxygen from unattended hoses or torches can accumulate rapidly in confined spaces leading to several hazardous conditions such as increased fire hazards, oxygen-enriched atmospheres, explosive atmospheres, and similar conditions. This proposed paragraph seeks to eliminate the hazards associated with unattended fuel gas and oxygen hoses or torches in confined spaces.

In paragraph (b)(2)(ii) of § 1915.503, OSHA is proposing that employers must not allow unattended charged fuel gas and oxygen hose lines or torches in enclosed spaces for more than 15 minutes. The proposed language in this paragraph has also been adapted from 29 CFR 1910.252; § 1915.52; and NFPA 312–2000, Standard for Protection of Vessels During Construction, Repair, and Lay-up (Ex. 20–4). The Committee agreed with this proposed requirement following extensive discussion and analysis. They felt that the potential for fire or explosion caused by unattended charged lines in enclosed spaces far outweighs the burden of pulling to open air or disconnecting.

In paragraph (b)(2)(iii) of § 1915.503, OSHA is proposing that the employer must disconnect all fuel gas and oxygen hoses at the supply manifold at the end of each shift. The fact that paragraph (b)(2)(iii) does not propose a hose removal requirement needs to be further discussed in rulemaking. The Agency seeks comment on this subject. Some shipyard employers indicated that at shift change fuel gas and oxygen hoses are rolled back to the manifold and disconnected at the supply end, while other shipyard employers found this to be impractical. They noted that at a large shipyard work can be done on a vessel as long as 800 feet with as many as seven decks. For this work, employees need to connect burning rigs on the fantail supply manifold and string 700 feet of fuel gas and oxygen hose lines through a number of enclosed spaces to reach a worksite. Adding more lines to this supply manifold with additional manifolds also located on the fantail creates the problem of unstringing and rolling back literally miles of hose lines to disconnect them. The potential for confusion exists when these lines are disconnected and then need to be reconnected. The Committee agreed that the hoses should be removed from the confined spaces, but there remained a question about whether this was necessary for enclosed spaces.

The concern is not necessarily about leaking hoses and their potential for creating a hazardous space. Rather, the bigger concern seems to be with the possibility of hooking up, at the supply manifold, a different (wrong) hose whose torch end was left hanging in an enclosed space. Because it is the wrong hose, it may now be dispensing gas (oxygen and fuel gas) into an space without anyone knowing, a space that is not involved in the intended work. The contaminated space may not be discovered until much later, thus creating a fire/explosion hazard. Additionally, leaking fuel gas and oxygen may create a flammable or oxygen-enriched atmosphere that may reach an ignition source.

OSHA deals with these hazards in proposed paragraphs (b)(2)(iii)(A) and (B) of § 1915.503. When fuel gas and oxygen lines are to be disconnected, the employer has two options. One is to completely roll the lines back to the supply manifold (open air) and then disconnect the torch. The other is, where a positive means of identification on the fuel gas and oxygen hose lines has been given before rolling out or extending the line, the employee can leave the lines extended, disconnect them at the supply manifold, and then disconnect the torch. This would assure that, not only would the proper extended lines be disconnected, but also that the proper lines will be reconnected, thus eliminating the hazards discussed above. Also, because the torch must be removed from the enclosed space after disconnecting the extended line from the supply manifold, the potential for the build-up of a hazardous atmosphere is greatly reduced.

Selecting the positive means of identification for the fuel gas and oxygen hose lines is left, by this performance type requirement, to the discretion of the employer. Examples of the positive means of identification include stenciling both ends of the line, color coding, stamped brass tags, and so forth. It is clear however, that the lines must be identified at both ends regardless of how many sections are joined, creating the run.

The Committee felt that extended lines could be reconnected safely provided that certain measures were followed: positively identifying hose line ends and maintaining the integrity of the complete burning rig. The former has already been discussed. The Committee recognized that maintaining the integrity of the burning rig can be accomplished in a number of ways. The preferred way is the drop test using gauges which has already been discussed. Another way is the use of a lockout device (Ex. 16b). Still another is testing a pressurized system, using soapy water at all connections. The Committee concluded—and OSHA agrees— that using such performance language as an alternative to specifications will help to nurture developing technology in these areas.

Section 1915.504 Fire Watches

The requirements of this section, as recommended by the Committee, apply to fire watch activity designated by the employer in shipyard employment. The requirements are proposed in three parts: (a) the employer's written policy on fire watches, (b) the posting of a fire watch, and (c) fire watch assignments.

The existing subpart in § 1915.52 Fire Prevention in Welding, Cutting and Heating is a 35-year-old standard. It was identified by SESAC in 1992 as needing updating and extension of its scope to cover all the situations in shipyard employment regardless of geographic location. The Committee has recommended, and OSHA agrees, that the existing requirements in § 1915 that address fire protection be replaced by the proposed requirements of this subpart.

Paragraph (a) of § 1915.504 requires employers to create and keep current a written policy on fire watches specifying the requirements for the training, duties, equipment, and PPE necessary for fire watches in the workplace. The PPE that fire watches will need is specified in to 29 CFR subpart I Personal Protective Equipment. No specific format is proposed for the written policy. The Committee determined the employer was in the best position to determine how the requirement can be met, and OSHA agreed. OSHA recognizes that the employer needs the discretion to tailor the plan to his or her workplace.

Paragraph (b) of § 1915.504 proposes that the employer must determine the need for and post a fire watch if during hot work: (1) Slag, weld splatter, or sparks might pass through an opening and cause a fire; (2) fire-resistant guards or curtains are not used to prevent ignition of combustible materials during work on or near decks, bulkheads, partitions, or overheads; (3) combustible material closer than 35 ft. (10.7m) horizontally and vertically cannot be removed, protected with flame-proof covers, or otherwise shielded with metal or fire-resistant guards or curtains, so that the material will not be ignited by the hot work; (4) on or near insulation, combustible coatings, or sandwich-type construction on either side cannot be shielded, cut back, or the materials removed. In the latter case, if removal is impracticable, the space affected by the hot work must be inerted; if that cannot be done, then a fire watch must be posted. A fire watch must also be posted when: (5) Combustible materials adjacent to the opposite sides of bulkheads, decks, overheads, metal partitions, or of sandwich-type construction may be ignited by heat conduction or radiation; (6) hot work on pipes or other metal is close enough to cause ignition through heat radiation or conduction if contact is made with insulation, combustible coatings, or combustible decks, bulkheads, partitions, or overheads; (7) hot work is close enough to unprotected combustible pipe or cable runs to cause ignition from exposure to the hot work; or (8) a watch is required by a Marine Chemist, a Coast Guard authorized person, or a shipyard Competent Person. The Committee identified these eight probable cases where a fire watch is needed for any size shipyard employment. OSHA's proposed requirements for this paragraph are based on their recommendations.

Paragraph (b)(1) of § 1915.504 proposes controlling ignition sources for work processes that generate slag, weld splatter, or sparks that might pass through an opening and cause a fire. It has been adapted from NFPA 51B–1999, Standard for Fire Prevention in Use of Cutting and Welding Processes (Ex. 19–3) and 1910.252(a)(2)(iii)(A)(3). During the meetings, the Committee discussed the size of the openings. The Committee considered whether the size needs to be specified. The provision's intent as proposed is to leave the requirement performance oriented. If a spark can get through an opening and cause a fire, then the area should be protected. The Committee preferred to not be specific, but to leave it to the employer to determine which openings need to be protected.

Paragraph (b)(2) of § 1915.504 proposes to recognize that ignition sources can be controlled through the use of fire-resistant guards or curtains. Where the combustible materials cannot be protected from a possible ignition source, the employer must post a fire watch. The Committee recognized that combustible materials can be protected through the use of fire-resistant guards or curtains. For example, a sandwich-type bulkhead could be safely protected from ignition of the combustible materials during hot work by using a fire-resistant guard or curtain.

Paragraph (b)(3) of § 1915.504 reflects the 35 ft. requirement (minimum distance of combustible materials from hot work) from the 1910.252(a)(2)(vii), subpart Q Welding, Cutting and Brazing and NFPA 51B–1999, Standard for Fire Prevention in Use of Cutting and Welding Processes (Ex. 19–3). In this paragraph OSHA proposes to require that an employer post a fire watch unless combustible materials are relocated to at least 35 feet beyond the hot work area or are protected by shielding. The Committee discussed the 35-foot distance at length during the course of the meetings and agreed that if the possibility exists that hot work materials could make contact with the combustible material in any way, a fire watch must be posted. No specific reasons or evidence to change the distance was suggested by any of the members or representatives from the public. The Committee's proposal kept the 35-foot distance. The Committee believes that the distance has been in regulatory requirements and national consensus standards for many years and reflects the current industry practice. The Agency concurs that such protection is reasonable and necessary.

Paragraph (b)(4) of § 1915.504 addresses the hazards associated with combustible coatings, sandwich-type construction, or other insulating materials. Besides shielding, cutting back, removing the materials and posting a fire watch, an industry practice for the acoustic foams that are commonly found in inaccessible voids is to inert the areas to make them safe for hot work. Industry practice, in these situation, has been to also provide charged fire hoses or portable extinguishers as fire protection measures for fire watches. Polyurethane and other organic foams are increasingly used on vessels because of their excellent insulating and lightweight properties. When properly installed and protected against fire, organic foams present no more fire hazard than other combustible materials. However, when organic foams (including those described as self-extinguishing, non-burning, fire resistant, flame resistant, and by similar terms) are exposed to fire or heat, they may ignite and burn with rapid flame spread, high temperatures, toxic gases, and voluminous quantities of smoke.

Paragraph (b)(5) of § 1915.504 addresses the potential hazards of adjacent spaces. This paragraph is adapted from § 1915.52(a)(3). It is an important part of the hazard assessment ''since direct penetration of sparks or heat transfer may introduce a fire hazard to an adjacent compartment, the same precautions shall be taken on the opposite side as are taken on the side on which the welding is performed.'' During hot work on or near insulation, combustible coatings, or sandwich-type construction on either side, if the employer cannot cut back or remove the materials or inert the space, a fire watch must also be posted on the opposite side of the hot work. This requirement is intended to address the increased fire hazard potential (noted in the explanation above for paragraph (b)(4))

that results from hot work conducted in areas with or adjacent to polyurethane or other organic foams.

In cases where hot material from hot work could involve more than one level, as in trunks and machinery spaces, a fire watch must be stationed at each affected level unless positive means are available to prevent the spread or fall of hot material. Positive means could be accomplished by placing barriers or by physically isolating an area. The same is true for adjacent spaces; a fire watch must be stationed at each affected work area.

Paragraph (b)(6) of § 1915.504 requires a fire watch during hot work when performed on pipes or other metal in contact with insulation, combustible coatings or combustible materials on or near decks, bulkheads, partitions, or overheads if the work is close enough to cause ignition by radiation or conduction. The fire watch workgroup discussed at length the term ''bulkhead and deck.'' Because the scope of subpart P is for shipyard employment, the subgroup discussed the fact that bulkheads and decks refer to vessels and vessel sections and although these terms could be used for structures and buildings, that is not the norm. Normally on landside structures the terms ''walls and floors'' are commonly used. Would use of ''bulkhead and deck'' in this provision cause confusion as to the applicability throughout shipyard employment, both on land side and aboard vessels? The Agency invites comment on this issue.

Paragraph (b)(7) of § 1915.504 requires a fire watch if hot work is conducted close enough to combustible pipe or cable runs to cause ignition (unless the pipe or cable runs are protected from exposure to the hot work). This provision takes into account the large amount of cable runs through vessel compartments. Although these cables must be tested to low flame spread and smoke production rates, they are still combustible and have been responsible for the spread of fire in many cases. Also, the use of combustible piping is increasing, and although required to meet strict flame spread and smoke production criteria, the potential for fire spread through pipe runs is the same as through cable runs and should therefore be safeguarded.

Paragraph (b)(8) of § 1915.504 proposes to add a provision for posting a fire watch when required by a Marine Chemist, a Coast Guard authorized person, or a shipyard Competent Person. These individuals are trained to know when a fire hazard requiring a fire watch exists even in circumstances not set forth in paragraphs (b)(2) through (b)(7) above. In one of the areas of biggest concern-where flammable and combustible liquids are present, for example, in vessel construction— the regulations already require a competent individual to determine where a fire watch will be required. An employer is already required to designate a shipyard Competent Person in accordance with applicable requirements of 29 CFR 1915.7. These requirements, coupled with the time-tested recommendations of NFPA 51B–1999 and 29 CFR 1915 subpart B, were considered adequate by the Committee.

Paragraph (c) of § 1915.504 outlines the assignment of fire watch duty. Originally, the Committee's Fire Watch Workgroup had recommended language for this paragraph that specifically states that the employer is responsible for a worker's assignment to fire watch duty. However, the Committee felt that this should be understood throughout the regulations that the employer is ultimately responsible for workplace fire safety, and thus it does not need to be repeated. OSHA agrees.

Paragraph (c)(1) of § 1915.504 states that an employee must not be assigned other duties when designated as fire watch by the employer. The Committee wanted to be very clear on this requirement, because although fire watch as an exclusive assignment is recognized as industry practice, the fire watch posting is crucial to maintaining safe working areas. For example, welders with their shields down rely totally on the fire watch's observations. This watch should not be distracted by having other duties assigned at the same time.

The provision in paragraph (c)(2)(i) requires that a fire watch must have a clear view of all areas assigned. This requirement effectively precludes a worker acting as his or her own fire watch. The workgroup told the Committee that if hot work workers, *i.e.*, welders and burners, were, in fact, acting as their own fire watch, the requirement for a clear view of those areas affected could not be met. They noted that when a welder's shield is down, the immediate area where the arc hits is the only area the welder is concentrating on, and the welder is oblivious to the surrounding work area affected. The Committee agreed and wanted to note specially that a worker performing hot work, such as a welder, cannot be his or her own fire watch under any circumstances.

The Committee was concerned that a fire watch be able to do his or her job. This means that a fire watch must be physically capable of accessing the necessary area and wearing the appropriate PPE. For example, a fire watch may have to climb ladders to access tanks or other structures, carry fire extinguishers, pull hoses, see the assigned area, pull alarm stations, and communicate the alarm verbally. Although there was much discussion, the Committee did not include a requirement stating that the employer must make sure that personnel who are expected to stand fire watch will perform and are capable of carrying out the duties of fire watch. The logic, after discussions, was that the employer would be the best judge of physical capability and mental alertness of the fire watch.

Paragraph (c)(2)(ii) of § 1915.504 proposes that employees assigned to fire watch duty must be able to communicate with workers exposed to hot work. As addressed later in the preamble for paragraph (c)(2)(x) of § 1915.508 Training, there was considerable discussion within the workgroup about current industry practices for the fire watch's contact with other workers. The Committee decided that communication is important because a fire watch may not be able to see a hot worker when, for example, the fire watch is on the other side of a compartment from the hot worker. The Committee did not want to limit the means of communication. For example, in the case of a fire watch on the other side of the bulkhead from the employee doing hot work, the means may be as simple as tapping on the bulkhead to signal whether the hot worker can continue or must stop, or it could be a more electronic communication system such as radio communication.

Paragraph (c)(2)(iii) of § 1915.504 specifies that the fire watch must remain in the hot work area at least 30 minutes after hot work is completed. A provision has been added that permits the fire watch to be relieved sooner if the employer or the employer's representative surveys the exposed areas, conducts a post-work hazard assessment, and determines that no further fire hazard exists. Obviously, this determination can only be made after a hazard assessment is completed. The fire watch workgroup carried forth this requirement from SESAC's recommendation that the NFPA and industry-accepted practice be used as the rationale for the 30 minute requirement unless the employer surveys the affected work area(s) and determines that there is no further fire hazard. The workgroup recommended to the Committee that when the work area was protected before the hot work was done, the employer or the

employer's representative could resurvey the affected area and determine the area was safe from fire hazards without the need for a fire watch for 30 minutes after completion of the hot work. The Committee agreed. The intent of this provision is to encourage employers or their representative to use the hazard assessment process throughout the work—beginning, middle (to see if conditions change), and at the end (to determine how long the fire watch may be needed).

OSHA invites comment on whether the fire watch remaining in the hot work area for at least 30 minutes after completion of the hot work is the equivalent to the employer's immediate survey of the exposed area to making a determination that there is no further fire hazard.

Paragraph (c)(2)(iv) of § 1915.504 proposes that the employer must ensure that employees assigned to fire watch duty are trained to detect fires that occur in areas exposed to the hot work. (For a further explanation, *see* the Training section at § 1915.508.)

Paragraph (c)(2)(v) of § 1915.504 requires that the fire watch must attempt to extinguish any incipient stage fires in the assigned work area that are within the available equipment's capacity and within the fire watch's training qualifications as defined in 1915.508 Training. The term ''incipient stage fire'' is defined in the General Industry Fire Protection Standard § 1910.155(c)(26): Incipient stage fire means a fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, class II standpipe or small hose systems without the need for protective clothing or breathing apparatus. Although the maritime industry asked for a single standard, this definition is an example where the general industry standard is referenced to reduce regulatory duplication. OSHA seeks comment on whether the definition needs to be included in this standard.

Paragraph (c)(2)(vi) of § 1915.504 proposes the requirement that the fire watch alert employees of any fire that goes beyond the incipient stage. The method the fire watch uses to alert other employees is not specified. The fire watch can alert in the way most suited to the worksite and conditions. Whether this is accomplished by shouting, waving of arms, or hand signals is left up to the employer to instruct the fire watch. In a noisy working environment, it might be most appropriate to tap hot workers on the shoulder and then motion to them to follow or exit the area. In a smokey situation, vocal communication would be more appropriate.

Paragraph (c)(2)(vii) of § 1915.504 provides that if fire watches are unable to extinguish fire in the areas exposed to the hot work, they must activate the alarm and start the evacuation procedure as trained according to § 1915.508(c)(2)(xi) and the employer's fire safety plan, § 1915.502.

Section 1915.505 Fire Response

In this section OSHA proposes specific requirements for fire response in shipyard employment. At present, OSHA does not have any specific requirements for fire response in shipyard employment.

Responders to shipyard fires encounter a complex set of fire hazards involving buildings, vessels in dry-dock or on ways, afloat, or alongside a quay. Fire responders need to be prepared to suppress a wide range of fire scenarios from a flammable liquid storage room in a shipyard building to oil-soaked rags in an engine room on a ship. Types of fires could include ordinary combustible materials (such as wood, paper or cloth), flammable or combustible liquids (such as oil, fuels, paints or chemicals), insulation and other materials that give off toxic gases and smoke, electrical fires (involving energized motors, circuit controls, transformers or wiring) or even a rare combustible metal fire (such as magnesium or titanium).

Shipyard firefighting as defined in section 1915.509 Definitions may be provided by:

1. Members of a fire brigade established by the shipyard, consisting of employees who have primary duties other than firefighting;

2. Workers of the shipyard employed as full-time firefighters; or

3. Public, private, governmental, or military units providing rescue, firefighting, and other related services.

As expressed by one Committee member, when firefighters respond to a shipyard fire, the safety of the shipyard workers rests with those firefighters; therefore, that member noted, the safety of all firefighters should be addressed by this standard and these rules should apply to them as well. In fact, the Committee expressed concern that whoever provides fire response to shipyard employment must meet certain minimum standards. The Committee's consensus was that designated workers (whether employed by the shipyard or by another employer) must be trained and equipped to fight fires in shipyard employment as safely as possible to reduce worker deaths or injuries related to these fires.

To ensure that this happens when firefighters are not shipyard workers, the Committee decided to require a liaison be established between the shipyard employer and the outside organization providing response services. Consistent with the recommendations of the Committee, OSHA is proposing that the shipyard liaison's communication with an outside fire response organization must include addressing facility and layout familiarization and coordination protocols. Public fire departments in those states with approved section 18b State Plans that respond to shipyard facilities will be covered by similar requirements through their respective states. Federal OSHA does *not* have jurisdiction over state and municipal fire departments or volunteers. Federal firefighters are covered under Executive Order No. 12291. OSHA believes that the safety of all firefighters is a major concern and intends the broadest coverage possible under the Act regardless of the shipyard employer's fire response arrangements. The Committee was in full agreement that anyone responding to a shipyard employment fire to actually extinguish a fire should be covered by this proposed rule to the extent possible. The proposed coverage of this standard, for fire responders has to exclude state and municipal fire departments and volunteers even though they will benefit from the requirement to establish a liaison with them.

Shipyard fire responders do not include support personnel responding at or near fires who have only limited support functions to perform. The Committee agreed that the shipyard employment workers who might respond to provide support services but are not exposed to the hazards of the fire, should not be covered. Such support services include electricians, utility workers, and facility management representatives. As explained by one Committee member, the requirements of this proposal are not intended to apply to employees responding to a shipyard employment fire to open or close valves, turn off electric service, or disconnect gas supplies. ''Support personnel,'' as the Committee called them, are designated persons not put into harm's way but performing such tasks as shutting down or isolating gas lines and disconnecting electrical service. They are not fire response personnel since they are not exposed to the hazards of firefighting. Members of the public, including Vincent Galattli from Bender Shipbuilding and Michael Davis from Halter Marine, noted that some shipyard

employment workers join community fire departments as volunteers. These volunteers are sometimes used in shipyard employment to pull hoses but do not fight fires. Committee member Buck Hurley from the Norfolk Naval Shipyard noted that crane operators could be used to provide supplies, water, or chemicals, but not perform actual firefighting.

This proposed section consolidates the requirements of 29 CFR 1910.156 Fire Brigades with some of the provisions in NFPA 1500–2002, Fire Department Occupational Safety and Health Program (Ex. 20–5), creating a standard that specifically addressees shipyard fire response.

A Committee workgroup consisting of representatives of the fire service, government, labor, and employers developed the initial proposed language for this section. In addition to using the SESAC recommended proposal and current industry practice, the workgroup relied heavily on NFPA 1500–2002. The workgroup also discussed and reviewed NFPA 600–2000, Standard on Industrial Fire Brigades (Ex. 20–6).

NFPA completely revised NFPA 600 in 2000 to be consistent with OSHA's Fire Brigade Standard. In 2000, NFPA further revised the document to include industrial fire departments that were previously covered in NFPA 1500.

The workgroup chose to rely more heavily on NFPA 1500–2002 rather than NFPA 600–2000 because of the need to make sure that response from outside the yard would be compatible with response from inside the yard. In many communities, particularly where there are small employers, the shipyard must rely on and coordinate fire response with the local fire authority. Through this section, OSHA intends to assure the coordination between the yard and the outside fire response organization so that they can work together safely.

There is one general distinction that OSHA wants to make clear with respect to fire response in shipyard employment. As recommended to OSHA by the Committee, shipyard support personnel are not considered members of the shipyard fire brigade or fire department when they respond to fires on board vessels or vessel sections. The Committee agreed that additional shipyard personnel, usually yard maintenance or temporary service employees, can and do react to fire alarms on board vessels and vessel sections. However, when these employees respond to the fire location, they do so with the understanding that they will not put themselves at risk by attempting to fight fires. Rather, their only responsibility is to offer skilled support to fire brigade or fire department responders by securing certain utilities (*i.e.*, electrical, ventilation, compressed air, and oxy-fuel lines suppling the vessel or vessel section) when necessary during fire suppression activities. Because they have detailed knowledge of the vessel's or vessel section's layout of temporary services and the locations within the yard for controlling these services, they can also serve as an information resource for firefighters responding to the fire.

For example: A large cargo ship is tied up at a pier. Manifolds provide fuel gas and oxygen for hot work located on the main deck of the vessel. The manifolds are fed from the pier. A fire is discovered below decks and the fire alarm sounds throughout the vessel. The employees leave their work stations and proceed off the vessel to a waiting area. The yard's fire brigade arrives and boards the vessel. The outside or municipal fire department is alerted and initiates its response plan. As part of the yard's fire safety plan, the temporary service and yard maintenance departments respond to the pier alongside the vessel. Representatives of the yard's fire brigade meet with the temporary service employees and they communicate with the firefighters on board the vessel to identify the location of the fire. Based upon the information received from the firefighters on board the vessel, the temporary service employees will begin to secure utilities that provide service to the fire area. Once the utilities have been secured to prevent hazards to the firefighters, the temporary service employees will return to the staging area and await further requests from the yard's fire brigade.

In this scenario, the temporary service employees did not enter the vessel's compartments with the intent to fight the fire. They responded to give skilled, technical support to the responding fire departments. OSHA wants to make it clear that in shipyard employment, the shipyard support personnel, such as temporary service employees, are not considered part of the shipyard's fire brigade or fire response department. Shipyard fire response department or brigade employees who participate in the actual role of fire suppression and control are the only employees covered by this section. These employees must be trained for the duties and functions they are expected to perform. The shipyard employees who are not part of the shipyard's fire brigade or fire department, including skilled support employees, are not covered by this section. Their protection is provided by other standards in this part.

In paragraph (a)(1) of § 1915.505, the shipyard employer is required to determine who will perform fire response in the shipyard and what type of response will be provided. The Committee recommended this approach based on the diverse fire response capabilities it found throughout the industry. Some shipyard employers, those with very large facilities, employ full-time shipyard firefighters and provide them with response apparatus and equipment. At the other end of the spectrum are the employers at small shipyards who must rely totally on public fire protection. One Committee member indicated that his shipyard fire response personnel constitute the superior fire protection expertise in his community. This is with regard not only to shipyard fires but also to the fire response operations of the local public fire department to which he offers support and back-up. Yet, at another meeting, a public fire official indicated his department provides all of the fire protection for the shipyards located in his district. The Committee consensus is that the deciding factors are so many and so varied that each shipyard employer must take responsibility for determining who will provide fire response services and what those services will be.

OSHA proposes in paragraph (a)(2) of § 1915.505 that the employer must create and maintain an updated written statement or policy that describes the internal and outside fire response organizations that the employer will use. In complete agreement with the Committee, OSHA is promoting the idea of pre-planning throughout this proposed fire response section.

Paragraph (a)(3) of § 1915.505 proposes that the employer create, maintain, and update a written statement or policy that defines what evacuation procedures employees must follow if the employer chooses to require a total or partial evacuation of the worksite at the time of a fire.

The Committee stated strongly that once the shipyard employer decides how to protect employees from the hazards of fire, the methods of protection must be pre-planned and documented regardless of the type of response the employer chooses. Accordingly, in paragraph (b) of § 1915.505, OSHA proposes the information that must be included in the written policy statement required by this section. These written policy statements should set forth the basis for operating a fire response service. A key point is to set out clearly the specific

functions the fire response service is authorized and expected to perform. Employers must assert their authority to set the specific functions and the limits of the functions the fire response service will provide. The employer also must furnish the necessary resources for delivering the designated services. Such services might include structural fire response, emergency medical services, hazardous materials response, high-angle rescue, heavy rescue, and others.

OSHA proposes in paragraph (b)(1) of § 1915.505 that, if the employer chooses to provide internal fire response, then the employer must create, maintain, and update a written statement or policy that defines the fire response to be provided. The information would include the organizational structure of the fire response service; the number of trained fire response employees; the minimum number of fire response employees necessary, the number and types of apparatus, and a description of the fire suppression operations established by written standard operating procedures for each type of fire response at the employer's facility; training requirements; expected functions that may need to be carried out; and procedures for use of protective clothing and equipment. Spelling out the specific parameters of services to be provided allows the fire response service to plan, staff, equip, train, and deploy members to perform these duties.

Similarly, OSHA proposes in paragraph (b)(2) of § 1915.505 that if the employer chooses to use an outside fire response organization, then the employer must include specific information in the employer's policy statement. The policy statement should include the following: (1) The types of fire suppression incidents to which the fire response organization is expected to respond at the employer's facility or worksite; (2) the liaison which would presumably be by individual name or job title, between the employer and the outside fire response organization; (3) a plan for fire response functions that discusses using or getting help from other organizations, and familiarizes the external fire response organization with the layout of the employer's facility or worksite, including access routes to controlled areas, and site-specific operations, occupancies, vessels or vessel sections, and hazards; and how hose and coupling connection threads are to be made compatible and where the adapter couplings are kept; or have a statement saying that they will not allow the use of incompatible hose connections.

OSHA further proposes in paragraph (b)(3) of § 1915.505 that if the employer chooses to use a combination of an internal and an outside fire response organization, then the employer must define the fire response services in addition to the requirements in (b)(1) and (2) above, that will be provided by each fire response organization. Specifically, the following information must be included: The basic organizational structure of the combined fire response; the number of combined trained fire responders; the fire response functions that need to be carried out; the minimum number of fire response employees necessary, the number and types of apparatus, and a description of the fire suppression operations established by written standard operating procedures for each particular type of fire response at the worksite; and the type, amount, and frequency of joint training that must be given to fire response employees.

As an alternative to providing active fire response, the Committee recognized in paragraph (b)(4) of § 1915.505, OSHA's longstanding policy that employers may also ensure employee safety in case of fire through the means of evacuation. Accordingly, paragraph (b)(4) of § 1915.505 would require that the employer's evacuation policy statement include the following: Emergency escape procedures; procedures to be followed by employees who may remain longer in the worksite to perform critical shipyard operations before they evacuate; procedures to account for all employees after emergency evacuation is completed; the preferred means of reporting fires and other emergencies; and names or job titles of the employees or departments who may be contacted for further information or explanation of duties. These requirements are based on similar requirements found in employee emergency plans and fire prevention plans (29 CFR 1910.38).

Emergency escape procedures in shipyard employment can vary greatly depending upon whether the worksite is located on a vessel or vessel section or in a landside facility. For example, on a vessel at anchorage, escape routes from the vessel may be more difficult to identify than those found in a landside machine shop, carpenter's shop, welding shop, cafeteria, employment office, or similar worksite. This paragraph also requires procedures to protect employees who must remain behind to perform critical shipyard operations before they evacuate. Critical shipyard operations may include shutting down a vessel's power plant, securing utilities to the fire area, or similar activities. Additionally, accountability procedures for all employees following emergency evacuation must be established. For example, employees could be directed to report to a specific location after evacuation. Another important element of the evacuation policy is the preferred means of reporting fires or other emergencies. Examples include telephone or radio communications, fire alarms, steam whistles, verbal communication, or other tactile, visual, or audible means of communication at the employer's discretion. Finally, as a means to administer the evacuation policy effectively, the statement must indicate the key individuals by name, job title, or department to be contacted for further information or explanation of duties under the policy.

In paragraph (b)(5) OSHA is proposing a requirement that the employer must include a description of the emergency rescue procedures and names or job titles of the employees who are assigned to perform rescue and emergency response. The Committee recommended this requirement and OSHA agrees.

In paragraph (c) of § 1915.505, OSHA, following the recommendation of the Committee, proposes the physical and medical qualifications shipyard employees must meet to be a part of the fire response. In paragraph (c)(1) of § 1915.505, OSHA requires that all fire response employees receive medical examinations to assure that they are physically and medically fit for the duties they are expected to perform. This approach is consistent with NFPA 600–2000, NFPA 1500–2002, and other OSHA standards, such as in 29 CFR 1910.156 and 29 CFR 1910.120. OSHA recognizes that firefighting is one of the most hazardous occupations and that those who perform fire response activities must be able to perform them properly without jeopardizing the safety and health of themselves and other firefighters. Of particular concern to OSHA are such conditions as emphysema, heart disease, and epilepsy. While these conditions do not preclude participation in fire response, they may preclude participation in certain fire response activities. For that reason, OSHA proposes to require the employee's physical and mental fitness be in accord with the duties the employee will perform.

In paragraph (c)(2) of § 1915.505, OSHA is proposing that fire response employees who are required to wear respirators while performing their duties must meet the medical requirements of 29 CFR 1915.154 Respiratory protection. This

requirement is consistent with the language of 29 CFR 1910.134 (c)(1) that requires employers whose employees use respirators to develop and implement a respiratory protection program. One of the elements of a respiratory protection program is implementing medical evaluation for employees who use respirators. Paragraphs (g)(3) and (g)(4) of 29 CFR 1910.134 require firefighters who perform interior structural firefighting or who enter atmospheres that are immediately dangerous to life and health (IDLH atmospheres) to wear self-contained breathing apparatus.

In paragraph (c)(3) of § 1915.505, OSHA proposes to require that the employer make sure that all fire response employees have an annual medical examination. Further, in paragraph (c)(4), medical records of fire response employees must be kept according to 29 CFR 1915.1020 Access to Employee Exposures and Medical records. These proposed requirements are consistent with existing regulations found in 29 CFR 1910.156 and 29 CFR 1910.134.

In paragraph (d) of § 1915.505, OSHA addresses the procedures the employer would have to follow for organizing internal fire response functions. Paragraph (d)(1) proposes that the employer must organize the employer's fire response functions to make sure that there are enough resources to safely conduct emergency operations at the site. This language is consistent with the goals and language of paragraph 4.1.1 of NFPA 1500–2002 addressing the fire department's organizational statement. The Committee believes organization of the internal fire response functions is critical to its success in a fire emergency.

In paragraph (d)(2) of § 1915.505, OSHA proposes that the employer must set up written administrative regulations, standard operating procedures, and departmental orders for fire response functions. This proposed language is also consistent with the language of Chapter 4 in NFPA 1500–2002 addressing the organization of fire response providers.

In paragraph (d)(3) of § 1915.505, OSHA proposes that the employer must set up an Incident Management System (IMS) to coordinate and direct fire response functions. It is proposed that this system must include specific fire emergency responsibilities; how the employer will account for all fire response employees during an emergency operation; and what resources would be offered by outside organizations. This proposal is consistent with the goals and language found in paragraph 8.1 of NFPA 1500–2002. The IMS is an improved fire department management and control system, based on actual experience with the Incident Command System (ICS) recognized in other OSHA standards such as 29 CFR 1910.156 Fire Brigades and 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response. Incident command is now a subset of incident management. The new system recognizes that command at an incident is only part of the overall management necessary to safely respond to emergency situations.

In paragraph (d)(4) of § 1915.505, OSHA proposes that employers provide this information (of paragraph (d)) the outside fire response organization to be used. The Committee believes that providing this information will improve coordination and ease pre-planning efforts to ensure a safe overall fire response. These proposed provisions are consistent with existing OSHA requirements (29 CFR 1910.156 Fire brigades and 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response).

Paragraph (e)(1) of § 1915.505, addresses the personal protective equipment of fire response employees. OSHA proposes the employer must provide hazard specific personal protective clothing and equipment, at no cost, to fire response employees. It is also proposed that the employer must make sure that each employee wears the personal protective clothing and equipment that offers protection from the hazards to which that employee is likely to be exposed. This general requirement was recommended by the Committee and is consistent with the language found in chapter 7 of NFPA 1500–2002. It is specifically consistent with existing OSHA standards and with paragraph 7.1.2 of NFPA 1500–2002.

In paragraph (e)(2) of § 1915.505, OSHA proposes the requirements for protective clothing's thermal stability and flame resistance. It is proposed in paragraph (e)(2)(i) that the employer would have to make sure that each fire response employee exposed to the hazards of flame does not wear clothing that, when exposed to flames, could increase the extent of injury that the fire response employee would sustain. Proposed paragraph (e)(2)(ii) specifically prohibits wearing clothing made from acetate, nylon, or polyester, either alone or in blends, unless it could be shown that the fabric can withstand the flammability hazard that could be encountered, or that the clothing is worn in such a way to eliminate the flammability hazard that may be encountered. This language is consistent with the language in existing OSHA standards and in paragraph 7.1.6 of NFPA 1500–2002.

In paragraph (e)(3) of § 1915.505, OSHA proposes the requirements for respiratory protection for shipyard fire response employees. The proposed requirements in paragraph (e)(3) are consistent with current industry practice as discussed by the Committee.

In paragraph (e)(3)(i) of § 1915.505, OSHA proposes that the employer provide self-contained breathing apparatus (SCBA) to all shipyard fire response employees who are involved in emergency operations in an atmosphere that is immediately dangerous to life or health (IDLH), may become IDLH, or is unknown. This language is consistent with existing OSHA standards and paragraph 7.8.7 of NFPA 1500–2002.

In paragraph (e)(3)(ii) of § 1915.505, OSHA proposes that the employer provide SCBA to fire response employees performing emergency operations during hazardous chemical emergencies that will expose them to known chemicals in vapor form or to unknown chemicals. OSHA recognizes that there may be a potential for employee exposure to hazardous chemicals during fire response emergencies due to the nature of shipyard employment. As proposed, this requirement would limit employers to the use of SCBAs for this type of chemical exposure.

In paragraph (e)(3)(iii) of § 1915.505, it is proposed that the employer must provide either SCBA or respiratory protective devices. The SCBA or respiratory device must be certified by NIOSH under 42 CFR part 84 as suitable for the specific chemical environment, to fire response employees who perform or support emergency operations that will expose them to chemicals in liquid form. In this proposal, OSHA recognizes that the hazard to employees because of liquid chemical exposure is such that respirators other than SCBAs, such as cartridge respirators, may provide appropriate protection and be less costly to provide and maintain.

In paragraph (e)(3)(iv) of § 1915.505, OSHA also proposes that the employer must ensure that additional outside air supplies used in conjunction with SCBA be positive pressure systems and certified by NIOSH under 42 CFR part 84. Again, this proposal is consistent with existing OSHA standards and paragraph 7.10.1.1 of NFPA 1500–2002.

In paragraph (e)(3)(v) of § 1915.505, OSHA proposes that the employer must provide only SCBA that meets the requirements of NFPA 1981–1997, Standard on Open-Circuit Self-

Contained Breathing Apparatus for Firefighters (Ex. 20–7). The fire response members of the committee, stated that this has been a long standing recommendation and has become standard equipment for all fire response organizations throughout the country.

In paragraph (e)(3)(vi) of § 1915.505, OSHA proposes that the employer establish a respiratory protection program and use respiratory protective equipment according to 29 CFR 1915.154 Respiratory Protection. The Committee based this proposal on the language found in 29 CFR 1910.156, and 29 CFR 1910.134(g).

In paragraph (e)(4) of § 1915.505, OSHA proposes that the employer must supply at no cost to all fire response employees who are exposed to the hazards of interior structural firefighting within shipyard employment, either protective coats and trousers, or protective coveralls; helmets; gloves; footwear; and protective hoods that meet the applicable requirements of NFPA 1971–2000, Standard on Protective Clothing Ensemble for Structural Firefighting (Ex. 20–8). This proposal is based upon chapter 7 of NFPA 1500–2002.

In paragraph (e)(5) of § 1915.505, OSHA proposes that the employer must supply, at no cost to all fire response employees who are exposed to the hazards of proximity firefighting, the appropriate protective proximity clothing that would have to meet the applicable requirements of NFPA 1976–2000, Standard on Protective Clothing for Proximity Firefighting (Ex. 20–9).

It is the intent of this section to require that only the shipyard employees who will be engaged in operations that will expose them to the intense radiant heat of a proximity firefighting incident (the proximity hot zone) be equipped with specialized proximity firefighting protective clothing.

Employee protection from the hazards of proximity firefighting situations should be viewed in a similar manner to hazardous materials operations. That is, employees must be fully encapsulated to protect them from the unique hazards associated with both situations. The employer should know the locations where such potential exposure to high radiant heat hazards exists, such as bulk flammable liquid or bulk flammable gas facilities. By determining what operations employees could undertake and what the potential exposure will be for those employees conducting fire response operations, the employer will know which employees need proximity firefighting clothing.

At an incident, the employer must establish the boundaries of the proximity hot zone for that incident and require all who must operate within those boundaries to be protected from the intense radiant heat. Intense radiant heat may cause injury to the employees or damage or destroy their structural firefighting protective clothing. The employer could make the decision to evacuate the area and protect employees from such exposures. Then the employer can summon mutual aid that is equipped with the appropriate equipment and proximity protective clothing to handle the proximity hot zone of the incident. The employer could also use fixed protection systems available at the facility to apply extinguishing agents (master streams, water deluge, foam, *etc.*) into the proximity hot zone. Alternatively, the employer could train and equip his or her own response employees to be able to fully deal with these incidents.

Not every employee needs to be included in the proximity hot zone operations unless the employer's written statement or policy requires these resources. For example, the employer may plan fire response operations that would contain and control the fire without the need for employees' operating within the proximity hot zone. Therefore, the employer would not need to provide proximity firefighting protective clothing. Using other protective strategies (including but not limited to physical shields or barriers, or large volume water stream applications that are sustained over the entire duration of the incident) could protect employees who otherwise would need proximity firefighting protective clothing. This language is consistent with the language in paragraph 7.3 of NFPA 1500–2002.

In paragraph (e)(6) of § 1915.505, OSHA proposes that the employer provide a Personal Alert Safety System (PASS) device to each fire response employee involved in firefighting operations. The PASS devices must meet the requirements of NFPA 1982–1998, Standard on Personal Alert Safety Systems (PASS) for Firefighters (Ex. 19–10). This language is consistent with the language in paragraph 7.13.1 of NFPA 1500–2002.

A PASS is a device that is attached to or is an integral part of self-contained breathing apparatus (SCBA). It automatically sounds a distinctive alarm (some units also display a flashing strobe light) if a fire response employee becomes immobile for a pre-determined period of time (usually 30–40 seconds). For example, the device would be activated in the event a fire responder becomes incapacitated from structural collapse or runs out of breathing air. It can also be activated manually by the fire response employee. Fire response employees who might become trapped or lost, but are not unconscious, can also activate the device to help searchers locate them. The shrill alarm allows rescuers to locate the wearer quickly in dark or heavy smoke conditions. The alerting sound of a PASS can easily be distinguished from a low air supply alarm emitted by a SCBA. The Committee agreed that it is every fire fighter's nightmare to be in a fire situation and hear both alarms coming from a comrade's position. This means the comrade has run out of air and is motionless. All incidental fire response activities will immediately stop until the disabled fire fighter is located and pulled to safety. PASS devices are now considered standard issue and are recommended by NFPA Standard No. 1982–1998. It is also industry practice.

Section 1915.505(e)(7) addresses life safety ropes, body harnesses, and hardware. The workgroup, based on their experience, proposed this requirement to the Committee. Their recommendation is consistent with current practice in the fire service. The committee accepted the workgroups recommendations.

In paragraph (e)(7)(i) of § 1915.505, OSHA proposes that all life safety ropes, body harnesses, and hardware used by fire response employees for emergency operations must meet the applicable requirements of NFPA 1983–2001, Standard on Fire Service Life Safety Rope, Harnesses, and Hardware (Ex. 19–11). This is consistent with subpart I of this part and paragraph 7.14.1 of NFPA 1500–2002.

In paragraph (e)(7)(ii) of § 1915.505, OSHA proposes that only class I body harnesses may be used to attach fire response employees to ladders and aerial devices. This is consistent with NFPA 1983–2001.

In paragraph (e)(7)(iii) of § 1915.505, OSHA proposes that only class II and class III body harnesses may be used by fire response employees for fall arrest and repelling operations. This is consistent with NFPA 1983–2001.

In paragraph (f) of § 1915.505, OSHA addresses equipment maintenance.

In paragraph (f)(1) of § 1915.505, OSHA proposes that the employer must inspect and maintain personal protective equipment used to protect fire response employees to make sure that it provides the intended protection. Such inspection and maintenance is consistent with OSHA's personal protective equipment standards.

In paragraph (f)(2) of § 1915.505, OSHA addresses the maintenance of fire response equipment. The requirements for testing and maintaining fire response equipment are consistent with sound safety practices and the requirements for tools and equipment found in chapter 7 of NFPA 1500–2002.

In paragraph (f)(2)(i) of § 1915.505, the employer is required to keep fire response equipment in a state of readiness.

In paragraph (f)(2)(ii) of § 1915.505, OSHA proposes that the employer must make sure that all fire hose coupling and connection threads are standardized throughout the facility and on vessels and vessel sections by providing the same type of hose coupling and connection threads for hoses of the same or similar diameter. It is important to stress the need for standardized or compatible threads in couplings and connections. The Committee heard testimony from fire department personnel stressing the need for compatibility and standardization. Those fire department representatives indicated for example, that many 1½-inch hoses have threads that look very similar but cannot be connected.

In paragraph (f)(2)(iii) of § 1915.505, OSHA proposes that if the employer uses an outside fire organization for fire response and the employer expects them to use the employer's facility's or vessel's or vessel section's fire response equipment, then the employer must make sure that either all the facility's or vessel's or vessel section's hose and coupling connection threads are the same as those used by the outside fire authority or that suitable adapter couplings are supplied. This language is consistent with the language found in paragraph 9.3 of NFPA 14–2000 (Ex. 20–12).

Section 1915.506 Hazards of Fixed Extinguishing Systems on Board Vessels and Vessel Sections

This section addresses the hazards associated with fixed extinguishing systems on board vessels and vessel sections that could create a hazardous atmosphere when activated in shipyard employment, regardless of geographic location. Of particular concern is the incorrect or inadvertent activation of these systems. Fixed fire extinguishing systems found on land side are covered by the next section of this proposed subpart, § 1915.507 Land side Fire Protection Systems.

The hazards associated with the use of fixed extinguishing systems on board vessels and vessel sections have long been recognized by the United States Coast Guard (USCG) as evidenced by Coast Guard Commandant Notices and Instructions that date to 1978. The International Maritime Organization [2] (IMO) has also addressed this issue by issuing regulations that are part of the International Convention for the Safety of Life at Sea (SOLAS).

Testing these ships' fixed extinguishing systems has led to several fatalities. In October, 1996, aboard the Italian flag liquid natural gas (LNG) carrier SNAM PORTVENERE, an American Bureau of Shipping (ABS) surveyor and five shipyard technicians were killed when carbon dioxide (CO_2) was released accidently from a fixed fire extinguishing system that was being tested. On May 3, 1993, aboard the M/V CAPE DIAMOND, while a contractor was testing a low pressure CO_2 system that protected the ship's engine room, CO_2 was discharged accidently, causing the deaths of a Coast Guard marine inspector and a shipyard contractor. Additionally, an intentional activation of a manual CO_2 extinguishing system aboard the Australian naval vessel HMS APPLELEAF, caused the death of four persons. These incidents were attributed to human error in which the discharge of CO_2 extinguishing systems protecting spaces aboard vessels was allowed to occur while employees were working inside.

The Committee recognized and OSHA agrees that although the casualty history reveals problems with only CO_2 systems, the potential exists for the use of new extinguishing agents and application methods to produce hazards similar to CO_2. Therefore, the proposed employer's responsibilities in paragraph (a) of § 1915.506 apply to all fixed extinguishing systems aboard vessels and vessel sections, regardless of geographic location, that may result in a hazardous atmosphere if discharged. It is very likely that the only systems that may be affected by this regulation will be those that employ gaseous or two-phase (gaseous/liquid) extinguishing agents. However, by including all systems that may create a hazardous atmosphere when activated, the Committee believes that the regulation will be broad enough to cover future systems and/or extinguishing agents that are currently unforeseen. Examples of future possibilities include systems employing dry chemical extinguishing agents (these systems currently exist but are not typically installed on vessels), combination dual water/dry chemical systems, or systems using Halon alternative agents.

While developing this proposal, the Committee discussed whether to include requirements for other systems that do not cause hazardous atmospheres when activated, such as foam and automatic water sprinkler systems. After extensive discussion, the Committee decided that a standard for these systems was not necessary because they are not typically relied upon on board vessels and vessel sections, and they do not pose a significant safety and health threat to employees.

In proposed paragraph (b) of § 1915.506, the Committee agreed to require that systems, whether designed to be activated automatically or manually, be physically isolated or be provided with other positive means to prevent discharge of the systems before any work is done in a space equipped with fixed extinguishing systems. The Committee recognized the increased hazard posed by systems that are activated by either pneumatic, electronic, or other means, with no human action necessary to set them into operation. However, even if a system also has a manual means of activation, it would have to be physically isolated or provided with other positive means to prevent discharge. Examples of other positive means can be found in paragraph (c) of this section. Systems that are activated automatically are normally located in typically unoccupied spaces such as paint lockers and storage lockers, but can also be found in normally occupied spaces such as engine rooms and pump rooms.

In paragraphs (b), (d), and (e) of § 1915.506, the term physically isolated refers to physically preventing the extinguishing agent from entering the work area. This is typically done by installing a blank (a flat piece of metal between two flanges) in the supply line of the extinguishing system so that the extinguishing agent can not possibly be released into the protected area.

Paragraph (b) of § 1915.506 sets forth the provisions that must be completed before any work is done in a space equipped with such fixed fire extinguishing systems. In paragraph (b)(1) of § 1915.506, OSHA proposes that systems must be physically isolated or have other positive means to prevent discharge.

Proposed paragraph (b)(2) of § 1915.506 requires employee training to ensure recognition of systems discharge and evacuation alarms, and recognition of the appropriate escape routes. This training consists of making sure that employees recognize the discharge and

[2] The International Maritime Organization is the United Nations' specialized agency responsible for improving maritime safety and preventing pollution from ships.

evacuation alarms and escape routes in accordance with § 1915.508 of this subpart.

Proposed paragraph (b)(3) of § 1915.506 was included as a result of Coast Guard information about a casualty at sea. The United States Coast Guard recognized the need to ensure adequate means of escape from spaces protected by CO_2 systems. In this incident, the chief engineer inadvertently discharged CO_2 into a space with an inward opening door. Members of the crew were unable to open the door until pressure in the space subsided. During that time some crew members were asphyxiated. As a result of this incident the Coast Guard recommended that during inspections, CO_2 storage provisions and means of escape should be evaluated. The Coast Guard stated further that protective measures should be provided, such as making sure that doors open outward, that there are kick-out panels in doors or bulkheads, that doors are blocked open when the space is occupied, or that there are sufficient vent openings to the atmosphere. These recommendations are also recognized in COMDTINST 16000.7, MSM, Vol. II (Ex. 17) and SOLAS 74/78 (Ex. 18) which require outward opening access doors in CO2 protected spaces aboard vessels.

Proposed § 1915.506(b)(4) addresses the Committee's concern with inward opening doors, hatches, scuttles, and other potential barriers that may close off escape routes as a result of system activation. The Committee recognized that fully opening or removing doors may cause unacceptable exposures of equipment or employees to the elements (*e.g.* freezing, precipitation, etc.) and, therefore, proposed that this concern may be satisfied by placing a blocking device between the door and door frame to make sure that in the event of system discharge escape routes will not be impaired.

OSHA recognizes that placing a blocking device in a fire door is normally an unacceptable practice. However, in this case, because of the hazard of asphyxiation, OSHA would allow the doors to be blocked open, as long as the blocks are removed before the system is relied upon to provide fire protection.

Proposed paragraph (b)(5) of § 1915.506 requires employee training in the hazards associated with extinguishing systems, such as how to avoid disturbing system components and equipment that are located within spaces. Such components and equipment include piping, cables, linkages, detection devices, activation devices, and alarm devices. Typically in shipyard employment, employees rig materials and equipment in and out of vessel and vessel sections, using chain falls and come-alongs. Employees untrained about the dangers of disturbing system components could accidently activate the system while in the process of rigging.

The Committee recognized that the majority of current CO_2 systems are not equipped with components and instrumentation that would allow a simple method for physically isolating the system. Therefore, the Committee proposed paragraph (c) of 1915.506 to allow work in a space protected by a system activated solely by manual means without the need to physically isolate. Although the safest method is to physically isolate the system, OSHA believes that the requirements included in paragraphs (b)(1) through (5) of § 1915.506 provide an acceptable level of safety. One reason for these options is the impracticality of physically isolating the system for routine and short-duration maintenance and repairs. The Committee wanted to encourage manufacturers, standards writing agencies, and end users to work to develop a simple and practical means for physically isolating existing and future systems.

Proposed paragraph (c) of § 1915.506 is intended to minimize the risk of intentional or accidental activation of a manual system during sea trials by requiring that all activation stations, whether remote or local, must be secured under lock and key or an attendant posted. The intent is to prevent unauthorized persons access to the activation controls of a manual system.

Proposed paragraphs (d) and (e) of § 1915.506 address system testing and system maintenance operations. These have been demonstrated to be the most likely causes of accidental system activation. The Coast Guard currently requires fixed fire extinguishing systems to be disconnected when undergoing any testing or maintenance. The need for these requirements is demonstrated clearly by the fatalities that occurred while testing the fixed system on the M/V CAPE DIAMOND mentioned above. As a result of this incident the Coast Guard recommended that personnel in spaces protected by CO_2 systems be evacuated during testing, unless suitable safeguards are instituted, such as isolating the CO_2 supply from the protected space or providing personnel with self-contained breathing apparatus (SCBA).

The Committee considered the Coast Guard recommendation for employees doing testing to have the option of using SCBAs or using emergency escape breathing devices (EEBD). But the Committee concluded that, because the potential for accidental discharge is so great during testing and maintenance of the system, it is necessary to physically isolate the system during testing and maintenance. The Committee further proposed requiring evacuation of the space by all personnel not directly involved in testing. The reason for proposing both to physically isolate the system and to evacuate non-essential personnel during testing is that testing of the system typically results in alarm activation and discharge of extinguishing agent. Therefore all indications of a test gone awry may be ignored as a false or nuisance alarm by non-essential employees until it is too late to evacuate the space safety. OSHA agreed that the proposal to evacuate all personnel not involved in testing the system best protects the safety of shipyard employees.

Several members of the Committee noted that during sea trials, the employer may expect employees to rely on the on board fixed extinguishing system in the event of a fire. In proposed paragraph (f) of § 1915.506, OSHA addresses the hazards associated with using fixed fire extinguishing systems by proposing that employees be trained and designated as necessary to operate and activate the system properly. Further, OSHA proposes that all employees be evacuated from protected spaces, affected areas, and accounted for before the discharge of the system.

Two serious incidents resulting in ten fatalities were caused by intentional activation of a manual CO_2 extinguishing system protecting an engine room while personnel were trapped inside. One incident occurred on the SNAM PORTOVENERE. Lloyd's Register reported on November 7, 1996, that ''an autopsy on the victims revealed that carbon dioxide was the cause of death, rather than the fire or smoke from the blaze which had been reported in the engine room. Sources said the fire was small and was being put out with hand extinguishers when the carbon dioxide plant was activated, saturating about 85% of the engine room within 2 minutes, according to one of the technicians who survived the incident.'' (Ex. 10–1). OSHA therefore proposes in paragraph (f)(1) of § 1915.506 to require that employees be trained and designated to operate fixed manual systems when the employer expects these systems to be relied on in the event of a fire.

As reported in the London Guardian, the second incident occurred aboard the

HMS APPLELEAF, when, ''an Australian naval captain ordered that the engine room be sealed off and the compartment flooded with carbon dioxide—with four crew members inside.'' (Ex. 10–2). Although the report was not clear as to whether or not the cause of the deaths in this case was from asphyxiation by the carbon dioxide or from fire and smoke exposure, the incident illustrates the hazards associated with discharging a lethal concentration of an extinguishing agent into an occupied, enclosed space. The Committee strongly recommended and OSHA agreed to propose in paragraph (f)(2) of § 1915.506 to require that the protected space and affected areas must be evacuated completely and all employees accounted for before discharge of the fixed manual extinguishing system.

Section 1915.507 Land Side Fire Protection Systems

While developing these provisions, the Committee examined existing OSHA regulations for fire protection. Currently there are several OSHA requirements for land side portable and fixed fire protection systems in part 1915. For flammable liquids, § 1915.36(a)(6) requires ''Suitable fire extinguishing equipment shall be immediately available in the work area and shall be maintained in a state of readiness for instant use.'' For welding, cutting and heating operations, § 1915.52(a)(2) requires, ''If the object to be welded, cut or heated cannot be moved and if all the fire hazards including combustible cargoes cannot be removed, positive means shall be taken to confine the heat, sparks, and slag, and to protect the immovable fire hazards from them.'' For all hot work § 1915.52(b)(2) requires ''Suitable fire extinguishing equipment shall be immediately available in the work area and shall be maintained in a state of readiness for instant use.'' For all hot work § 1915.52(b)(4) requires that ''Vaporizing liquid extinguishers shall not be used in enclosed spaces.''

Additionally, for ship breaking operations only, § 1915.52(c) requires ''In all cases, suitable fire extinguishing equipment shall be immediately available in the work area and shall be maintained in a state of readiness for instant use. Personnel assigned to contain fires within controllable limits shall be instructed as to the specific anticipated fire hazards and how the firefighting equipment provided is to be used.'' For general working conditions, § 1915.91(d) requires, ''Free access shall be maintained at all times to all exits and to all fire alarm boxes or fire extinguishing equipment.'' While these standards apply specifically to fire protection in shipyard employment, the Committee recognized that there are also additional standards in the part 1910 General Industry Standards that are currently used as guidelines in shipyard employment and are accepted industry practice. The Committee has recommended, and OSHA agrees, that the existing requirements in § 1915 that address fire protection will be replaced by the requirements of this subpart.

Subpart L of part 1910 contains the general industry standards for portable and fixed fire suppression systems. The specific types of equipment and systems regulated include portable fire extinguishers, standpipe and hose systems, automatic sprinkler systems, and fixed extinguishing systems using liquid, solid, or gaseous extinguishing agents. There are also requirements for fire detection and fire alarm systems. The current standards in subpart L were developed in 1980 (45 FR 60710) as a major revision to the original 6(a) standards adopted in May, 1971. While subpart L of part 1910 does not apply to the maritime industry (29 CFR 1910.155), many of these standards are used voluntarily as guidelines to control hazards to shipyard employees working in shipyard employment.

In addition to reviewing current OSHA standards, the Committee also considered applicable national consensus standards and codes developed by NFPA. The NFPA codes and standards are the recommendations of the NFPA consumers, property owners, fire authorities, federal agencies, insurance companies, and other persons interested in providing fire safety to life and property. The NFPA codes and standards are purely advisory documents so far as the NFPA is concerned. They become an influential force for the public when adopted by governmental authority. Many of the NFPA standards were adopted under the section 6 (a) of Occupational Safety and Health Act of 1970.

The Occupational Safety and Health Administration, through its standards, uses NFPA codes and standards in two ways: In most cases, the codes or standards are incorporated by reference, citing a particular edition. This may not be the latest edition published by the Association. In other cases, the OSHA standards actually extract some or all of the text from NFPA codes and standards and include it in the regulatory text of the OSHA rule.

With respect to this section (land side fire protection systems) of the proposal, the Committee recommended that OSHA incorporate by reference, the most current edition of an NFPA code or standard rather than extract the NFPA text and publish it as the OSHA rule. OSHA proposes, in this section, to follow the Committee's recommendation and incorporate by reference the necessary NFPA codes and standards. The standards proposed in this notice are based upon the current and applicable OSHA and NFPA codes and standards reviewed by the Committee.

In paragraph (a) of § 1915.507, OSHA proposes to establish the employer's responsibilities under the section. Under the proposed rule, the employer would be responsible for ensuring that all fixed and portable fire protection systems installed to meet a particular OSHA standard comply with the appropriate proposed requirements of this section. The proposed rules in this section do not apply to fixed or portable fire protection systems the employer has installed to meet requirements other than OSHA's.

This proposal is consistent with the philosophy adopted in part 1910 for regulating fixed and portable fire extinguishing systems. OSHA found during the development of the general industry requirements for fixed and portable fire protection systems that some employers may opt to take property protection systems out of service rather than upgrade them to meet OSHA standards, an action that is contrary to basic fire prevention policy and property protection concepts. Therefore, rather than risk the loss of property, and the associated economic impact of such losses, OSHA decided in 1980 to regulate only those systems it requires. (*See* 45 FR 60710.) Fire protection systems installed to meet other codes or standards would not be regulated by OSHA.

In paragraph (b) of § 1915.507, OSHA proposes to regulate the use of portable fire extinguishers and hose systems. By proposing to incorporate by reference NFPA 10–1998, Standard for Portable Fire Extinguishers (Ex. 20–1) in paragraph (b) of this section, the employer may replace up to one-half of the required complement of fire extinguishers by uniformly spaced 1½-inch (3.8 cm) hose stations. If the employer chooses to use hose systems, then the employer would have to meet the requirements of NFPA 14–2000, Standard for the Installation of Standpipe Systems (Ex. 20–12). This is consistent with current OSHA practice under 29 CFR 1910.157 and 1910.158. The incorporation by reference here, in paragraph (b)(1) of § 1915.507, should impose no greater burden on employers. Rather, it will permit some flexibility in

offering protection for incipient stage fires.

In paragraph (b)(2) of this section, OSHA is proposing that the employer may use hose lines attached to class II or class III standpipe systems in place of portable fire extinguishers if those hose systems meet the applicable selection, installation, inspection, maintenance, and testing requirements of NFPA 14–2000 (Ex. 19–12), Standard for the Installation of Standpipe and Hose Systems.

OSHA proposes in paragraph (c) of § 1915.507 to address the general requirements of fixed extinguishing systems the employer must install to meet a particular OSHA standard. In paragraph (c)(1) OSHA requires that all fixed extinguishing systems required by OSHA must be approved for their use by a National Recognized Testing Laboratory (NRTL). This is consistent with OSHA's current practice of requiring that all fire protection equipment and systems be approved for their purpose and design by a NRTL.

In paragraph (c)(2) of § 1915.507, OSHA proposes, as the Committee recommended, that employers must notify employees and take the necessary precautions to protect employees when a fire extinguishing system becomes inoperable.

In paragraph (c)(3) of § 1915.507, OSHA also requires that any inoperable system be repaired by a qualified technician or mechanic. This proposal is consistent with and taken from current, fire protection standards (29 CFR 1910.160 and NFPA 12–2000).

OSHA proposes in paragraph (c)(4) of § 1915.507 that when an area remains hazardous to employee safety or health as a result of the discharge of an extinguishing agent, personal protective equipment must be provided to employees who enter the discharge area or effective safeguards must be provided to warn employees not to enter the discharge area. This proposal is consistent with the requirements in § 1910.160(c).

This paragraph is necessary because some systems must be designed to discharge extinguishing agents in concentrations greater than what is safe for humans. These systems, with the potential for creating a hazard to employees, need special consideration and control. OSHA proposes to carry the current requirement in § 1910.160(c) over to the proposal, recognizing that the hazards of such systems need to be identified and controlled in shipyard employment. This is particularly true of systems using carbon dioxide and some of the newer Halon replacement agents. OSHA is also proposing a note to this paragraph directing the reader to § 1915.12, Precautions and the order of testing before entering confined and enclosed spaces and other dangerous atmospheres, for additional requirements for entry into dangerous atmospheres that may be created by the discharge of certain extinguishing agents.

In paragraph (c)(5) of § 1915.507, OSHA proposes to require the employer to post hazard warning or caution signs at both the entrance to and inside of areas protected by fixed systems that could discharge extinguishing agents in concentrations that are known to be hazardous to employee safety or health. This proposal is consistent with paragraph (b)(5) of 29 CFR 1910.160.

In paragraph (c)(6) of § 1915.507, OSHA proposes, as recommended by the Committee, that the employer must select, install, inspect, maintain, and test all automatic fire detection systems and emergency alarms according to the NFPA 72–1999, National Fire Alarm Code (Ex. 19–13). Presently, OSHA requires only that those fire detection systems and emergency alarms required to meet a specific OSHA standard meet the requirements of 29 CFR 1910.164 and 1910.165. OSHA's current standards in §§ 1910.164 and 1910.165 were based upon existing standards and technology available in the 1970s when OSHA developed the standard. Since that time, several technological advancements have occurred in both fire detection and fire alarm technology.

As a result, the NFPA consensus committee responsible for developing fire detection and alarm standards and codes made extensive changes to NFPA 72. The most recent edition of their consensus standard, the 1999 edition, recognizes many changes that have taken place in the detection and alarm industry, such as those required by the Americans with Disabilities Act, software testing, fire modeling, and communication technology. OSHA believes, as the Committee recommended, that incorporating by reference, NFPA 72–1999 as the OSHA standard for designing and installing all fire detection and alarm systems will provide employees with protections consistent with protections provided by other codes and standards used by local authorities having jurisdiction.

OSHA, in paragraph (d) of this section, addresses the selection, installation, maintenance, inspection, and testing requirements for specific types of fixed fire extinguishing systems the employer uses to meet a particular OSHA standard. In paragraph (d)(1) OSHA proposes, as recommended by the Committee, that standpipe and hose systems in land side facilities follow NFPA 14–2000.

In paragraph (d)(2) of § 1915.507, OSHA proposes to incorporate by reference, NFPA 13–1999, Standard for the Installation of Automatic Sprinkler Systems (Ex. 19–14); NFPA 750–2000, Standard on Water Mist Extinguishing Systems (Ex. 19–15); and NFPA 25–2002, Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems (Ex. 19–16), as the OSHA standard for installing OSHA-required automatic sprinkler systems in land side facilities. As above, this standard is being incorporated by reference at the recommendation of the Committee. OSHA does not believe that there is any increased burden placed upon employers by incorporating by reference this newer edition of the standard OSHA used in developing 29 CFR 1910.159. One of OSHA's goals with this proposal is to update outdated standards used as source standards in previous OSHA rules.

OSHA is also proposing a new standard in paragraph (d)(2) that would address installing fixed extinguishing systems that use water mist as the extinguishing agent. OSHA proposes to incorporate by reference NFPA 750–2000, Standard on Water Mist Extinguishing Systems (Ex. 19–15), as the OSHA standard for installing this type of system. The systems are found land side in places such as flammable liquid storage facilities and electrical equipment spaces.

In paragraph (d)(3) of § 1915.507, OSHA proposes to incorporate by reference several NFPA standards for fixed extinguishing systems that use water spray or foam for the extinguishing agent. OSHA proposes to incorporate by reference: the NFPA 11–2000, Standard for Low-Expansion Foam (Ex. 19–17); the NFPA 11A–1999, Standard for Medium- and High-Expansion Foam (Ex. 19–18); and NFPA 15–2002, Standard for Water Spray Fixed Systems for Fire Protection (Ex. 19–19) as the OSHA standards for installing fixed foam extinguishing systems. The provisions of this proposed incorporation by reference differentiate between the various expansion densities of foam discharges.

Current OSHA standards in part 1910 address foam extinguishing systems in general rather than specific terms. As stated above, one of OSHA's goals is to incorporate current standards in this proposal. Therefore, OSHA is proposing to incorporate by reference both NFPA 11–2000 and NFPA 11A–1999 to recognize current technologies and the possible use of low-, medium-, and high-expansion foam systems in

shipyard employment. OSHA believes this incorporation by reference will offer greater guidance and flexibility to those employers who choose to use fixed foam extinguishing systems to meet OSHA's standards.

In paragraph (d)(4) of § 1915.507, OSHA proposes to incorporate by reference the current edition of NFPA 17–1998, Standard for Dry Chemical Extinguishing Systems (Ex. 20–20), as the OSHA standard for installing fixed extinguishing systems using dry chemical extinguishing agents. Again, this proposed paragraph would apply only to those fixed dry chemical extinguishing systems the employer chooses to install to meet a particular OSHA standard. OSHA's proposal is based upon the Committee's recommendation.

In paragraph (d)(5) of § 1915.507, OSHA proposes to incorporate by reference the current edition of NFPA standards that address fixed extinguishing systems using gas as the extinguishing agent. Specifically, for standards for designing and installing fixed extinguishing systems, OSHA references NFPA 12–2000, Standard on Carbon Dioxide Extinguishing Systems (Ex. 20–21); NFPA 12A–1997, Standard on Halon 1301 Extinguishing Systems (Ex. 20–22); and NFPA 2001–2000, Standard on Clean Agent Fire Extinguishing Systems (Ex. 20–23).

OSHA recognizes that the fire extinguishing agent Halon 1301 is being phased out because of environmental concerns. However, for economic reasons, existing Halon 1301 systems may remain in service until such time as they are replaced by an alternative agent. Recognizing that existing Halon 1301 systems that remain in service, OSHA proposes to continue regulating their design and installation to ensure employee safety. For the systems that will replace Halon, OSHA is proposing for the first time that the employer meet NFPA 2001–2000 for their design and installation. This new proposal is based upon the Committee's recommendation that OSHA incorporate by reference the most recent edition of applicable NFPA standards to protect employees from hazards in the workplace.

Section 1915.508 Training

The Committee unanimously recognized the importance of employee training in combating the hazards of fire throughout shipyard employment. Specific emphasis is placed on hazard recognition, fire watch, and fire response. This is consistent with OSHA's long held philosophy that an adequately trained employee is a safe employee. OSHA is proposing the Committee's full recommendations regarding training. Also, OSHA's proposal extends the training requirement beyond ship breaking operations to include all activities in shipyard employment regardless of geographic location. This would include operations involving shipbuilding and ship repair activities as well as other activities engaged in by shipyard workers.

Under paragraph (a) of § 1915.508, the employer must train employees expected to perform incipient stage firefighting on board vessels, in vessel sections, and in land side facilities. Such training must be conducted initially upon employment and when necessary to keep them proficient in the following: (1) The general principles of using fire extinguishers or hose lines, the hazards involved with incipient firefighting, and the procedures used to reduce these hazards; (2) the hazards associated with fixed and portable fire protection systems that they may use or to which they may be exposed during discharge of those systems; (3) the activation and operations of fixed and portable fire protection systems provided for their use in the workplace; (4) the emergency alarm signals, including system discharge and employee evacuation alarms; and (5) the primary and secondary evacuation routes they must use in the event of a fire in the workplace.

At the Houston meeting held in February, 2002, the Committee agreed to add a note to paragraph (a) of § 1915.508 stating that while all vessels and vessel sections have a primary evacuation route, not all will have a secondary evacuation route. This language was added as clarification to paragraph (a)(5) because although this fire protection standard applies to all of shipyard employment, the uniqueness of vessels and vessel sections in comparison to buildings or structures should be noted.

OSHA's proposal is consistent with the current training requirements found in part 1915 for ship breaking activities and in part 1910 for other shipyard activities. The requirement to train and retrain selected employees is based upon the current requirements found in 29 CFR 1910.157.

In paragraph (b) of § 1915.508, OSHA addresses training requirements for fire response employees and the training requirement found in existing paragraph (c) of § 1915.52. That paragraph requires that, only for ship breaking operations, all personnel assigned to contain fires within controllable limits must be instructed about the specific anticipated fire hazards and how the firefighting equipment provided is to be used.

In paragraph (b)(1) of § 1915.508, OSHA proposes that the employer must have a written training policy, as part of the Fire Safety Plan (§ 1915.502) of this part, stating that fire response employees are to be trained and capable of carrying out their duties and responsibilities at all times. This is consistent with the requirements found in 29 CFR 1910.156 and NFPA 1500–2002.

In paragraph (b)(2), OSHA proposes that the employer keep written standard operating procedures (SOPs) that address anticipated emergency operations and update these procedures as necessary. The Committee concluded, and OSHA agrees, that written standard operating procedures are standard training tools that represent the best practice in the industry. This is consistent with the language in paragraphs 3–1.5 and 3–1.8 of NFPA 1500–2001.

In paragraph (b)(3) of § 1915.508, OSHA proposes that the employer review, in advance, all training programs and hands-on sessions to make sure that fire response employees are protected from training accidents. This proposal is based on a recommendation from the workgroup with full Committee approval and not from any established standard. The proposal requires a review of all training programs to make sure that the procedure will not expose trainees and their instructors to hazardous training conditions. The proposal should prevent the occurrence of accidents resulting from unexpected events such as flare-ups, collapses, entrapments, and stress-induced injuries during training evolutions.

In paragraph (b)(4) of § 1915.508, OSHA proposes that all fire response employees receive adequate training for carrying out their duties and responsibilities under the employer's standard operating procedures. This training program must make sure that these employees remain competent to respond to a fire. For example, the employee must know how to respond to a fire on board a vessel, where the pier hook-ups are located, how to gain access to the vessel, the location of the fire within the vessel, and the type of fire.

In paragraph (b)(5) of § 1915.508, OSHA proposes that the employer make sure that new fire response service employees are trained before they engage in emergency duties so that they can work safely and effectively at a fire scene. This language is consistent with the language in paragraph 3–1.3 of NFPA 1500–2002. The purpose of this proposal is to make sure that employees are trained to perform the duties

expected of them. If they have not been trained in a particular skill, they would not be permitted to perform any duty involving that skill. However, they may respond and perform duties for which they have been trained even if they have not received the entire training module for their position.

In paragraph (b)(6) of § 1915.508, OSHA proposes that the employer provide training for firefighters at least quarterly, according to the employer's written operational procedures. The Committee recommended that quarterly training is for actual firefighters, not necessarily for other fire response personnel who usually have just one function, such as connecting hoses to fire mains, starting fire pumps, or directing traffic. This language is consistent with the current requirement in 29 CFR 1910.156(c)(2) which requires annual training for all fire brigade members and quarterly training for those fire brigade members who may perform interior structural firefighting operations. The workgroup believed that the quarterly training requirement was appropriate because most fire response operations in shipyard employment, whether on the vessel or in land side facilities, would be beyond the incipient stage and most likely involve an interior attack.

In paragraph (b)(7) of § 1915.508, OSHA proposes that all fire response operations training must be conducted by qualified instructors. The Committee recognized, as does OSHA, the importance of using qualified instructors in all training provisions required by this section. This language is consistent with the language in paragraph 5.2.11 of NFPA 1500–2002.

In paragraph (b)(8) of § 1915.508, OSHA proposes that any training the employer does that involves live fire-fighting exercises would have to be done according to NFPA 1403–2002, Standard on Live Fire Training Evolutions (Ex. 19–24). This language is consistent with paragraphs 4.9.4 and 5.2.10 of NFPA 1500–2001.

In paragraph (b)(9) of § 1915.508, OSHA proposes that the employer must provide semiannual drills that cover site-specific operations, occupancies, buildings, vessels and vessel sections, and hazards, according to the employer's written operational procedures. The semiannual requirement for drills is consistent with the recommended frequency found in paragraph 5.3 of NFPA 1500–2002.

The Committee had some concerns about the requirement for the shipyard employment's fire department to perform two training drills within a one-year period. Some members of the Committee requested that OSHA count a fire response as one training drill. Most of the members did not want to count a fire response as a training drill citing that the drill is to be used for assessing and improving operational or deployment procedures. When an alarm is sounded and the shipyard fire department responds, the on-scene command is coordinating the scene and cannot simultaneously evaluate the response. The commander's primary responsibility is to ensure that their employees respond safely. The Committee understands that at the end of the response, the fire department's employees evaluate their deployment tactics, site-specific approach (buildings, shops, vessels and vessel sections), and hazards. This is usual and customary throughout the country and is not to be considered a training drill. Drills are used for the sole purpose of training, and fire response is for saving lives and property. OSHA agrees that fire responses are not to be considered drills for the purposes of this paragraph.

In paragraph (b)(10) of § 1915.508, OSHA proposes that the employer must not use smoke generating devices that could create a hazardous atmosphere in training exercises. This includes training done on vessels and vessels sections as well as in buildings and other structures. This language is consistent with paragraph 8.3.2 of NFPA 1500–2002. According to the NFPA Committee that developed NFPA 1500–2002, several accidents have occurred where smoke bombs or other smoke-generating devices that produce a toxic atmosphere have been used for training exercises. Where the employer must simulate emergency conditions, smoke-generating devices that do not create a hazard must be used.

Paragraph (c) of § 1915.503 sets forth the training requirements for fire watch duty. The Committee recommended that OSHA propose specific language stating when a shipyard employer should train workers as fire watches.

In paragraph (c)(1) of § 1915.508, OSHA proposes that the employer make sure the worker has been trained: (i) Before beginning the fire watch; (ii) when there is a change in operations that presents a hazard for which the worker has not been previously trained; or (iii) when the employer determines that the fire watch employee needs to be trained.

The Committee urged OSHA to include in the requirements for fire watch training a basic understanding of fire behavior that covers such elements as awareness, anticipation of different classes of fire in combination with different physical work areas, and extinguishing agents and their uses. The Committee recognizes that the fire watch's role is important in protecting lives and preventing fires within shipyard employment. To be able to evaluate a work area and to consider both the physical conditions and possible adverse effects of a fire in that area are also important skills that a fire watch needs to have. The Committee did not want to specify a particular course that must be used to train fire watches. OSHA has followed the recommendation by proposing these requirements in a performance-oriented manner to allow the employer to train workers in the most efficient and feasible manner for his or her shipyard employment environment. The hazards associated with each type of cargo must be taken into consideration. For example, repairing chemical barges has been concentrated in the Gulf and the inland waters of the Gulf. Therefore, fire watches in the Gulf area would likely be trained to deal with fires involving chemicals that are shipped by barge. Another consideration is the regional difference in temperatures that could affect the ignition and spread of fire. OSHA agrees with the Committee that individual employers are best suited to develop their fire watch training geared to specific shipyard employment operations.

In paragraph (c)(1)(iv) of § 1915.508, based on the Committee's recommendation, the Agency proposes that the employer must retrain fire watches annually. The Committee recognized fire watches as the first line of defense against the spread of fire, as discussed above under paragraph (c)(1) of § 1915.504. Annual training is an industry practice. In addition, according to the Committee, annual training is required on Navy contracts throughout the country, and it is not viewed as an additional requirement burden.

In paragraph (c)(2) of § 1915.508, the Agency proposes that each employee who stands a fire watch duty be trained. The training would include how to anticipate and be aware of the hazards that may be faced while performing fire watch duties. Such hazards may include limited egress or possible changes in atmospheric conditions. For the training requirement for fire watches to recognize the adverse health effects that may be caused by the exposure to fire, the Committee noted that workers have to be familiar with the OSHA standard for Hazard Communication, 29 CFR 1910.1200, and its requirements related to the products the workers are using in their work and the Material Safety Data Sheets (MSDSs) for those products, and where appropriate, for the last three

products carried in this space or the coatings that were applied to the steel before hot work. It was explained to the committee that workers exposed to hazardous chemicals are already covered by the OSHA Hazard Communication standard. The Committee noted that the workers need to be knowledgeable about fire prevention practices so they can correctly react to changes in the hot work area environment that introduce hazards not identified at the start of hot work. Examples are deterioration of housekeeping or introduction of combustible or flammable materials.

Paragraph (c)(2)(i) of § 1915.508 requires the employer to train a fire watch on the basics of fire behavior, the classes of fires, extinguishing agents and stages of fire, and methods of extinguishment. The basics of fire behavior usually include the definition of the fire triangle and tetrahedron as set forth by NFPA 1001–1997—Standard for Fire Fighter Professional Qualification (Ex. 19–25). Extinguishing agents commonly used in shipyard employment are dry chemical, water, and CO_2. Methods of extinguishing require removing one or more of the following: heat (ignition), oxygen, fuel, or chemical chain reactions. Members of the Committee suggested that the selection of a fire extinguisher used on certain materials may, in fact, present a hazard in itself. Even though the worker is trained to be able to identify, select, and use the appropriate extinguishing agent, such training does not relieve the employer from the responsibility to assess the hot work area hazards and make the correct extinguishing agents available. The Committee noted that particular extinguishing agents may vary and that in some yards, according to one employer, workers are forbidden to use CO_2 extinguishers in confined spaces.

The Committee raised a number of issues when reviewing paragraph (c)(2)(ii) of § 915.508 Training Requirements For Fire Watch Duty. One issue discussed was whether the employer should require live fire training for all fire watches. The Committee found that there were different requirements and restrictions across the country. Some members thought that how fire watch personnel are trained should be left up to the yard and not this Committee. Others stated that the only way a fire watch can learn the proper procedure is for that individual to have hands-on training on attacking a fire. One member stated that classroom training is the only way he could train employees because of his state's strict emissions standards. Another member stated that although the State of California has a ban on open-burning, the Department of Air Quality for the State of California does issue an annual permit for open fire burning for this type of training. Some members stated that the only way to train employees on how to properly use a fire extinguisher or fire hose is to put the trainees in a realistic situation. The training exercise would be a controlled burn and would teach the trainee the proper way to approach the fire. Initially, the Committee could not reach a full consensus on the issue of live versus classroom (lecture/video) training. During deliberations, one committee member from a large shipyard located on the Gulf Coast had not considered live-fire training but was persuaded by the discussion and is currently building a facility within the shipyard to perform this training. The Committee noted that there are various apparatuses available for live fire training that are either fabricated within the shipyard or commercially available. After lengthy discussions, a recommendation was unanimously agreed upon by the Committee and added by OSHA as proposed § 1915.508(c)(2)(ii). In this paragraph, the employer must ensure that each fire watch is trained using live fire scenarios whenever allowed by law.

Paragraphs (c)(2)(iii), (iv), and (v) propose, respectively, that employees who stand fire watch duty must be able to recognize the adverse health effects that may be caused by exposure to fire; be familiar with the physical characteristics of the hot work area; and be able to anticipate and understand the hazards associated with fire watch duties.

Paragraphs (c)(2) (vi) and (vii) of § 1915.508 require training on personal protective equipment (PPE), including what PPE is appropriate in a particular situation, as well as how to use it. The Committee noted that a fire watch may need the same or different items of PPE, and even PPE providing a different level of protection, from that used by a hot worker. The Committee further pointed out that the fire watch(es) could be assigned to an isolated or confined space and, therefore, would need the additional protection that is required under other sections of part 1915.

Paragraph (c)(2)(viii) of § 1915.508 proposes that an employee who stands fire watch duty must be trained to be able to select and operate fire extinguishers and fire hoses likely to be used. As in the case of fire extinguishers, whenever a fire watch may be expected to use a fire hose, the fire watch must be trained in its use. The Committee noted that fire hoses 1½-inches in diameter are used by fire watches in some yards but not in others. For example, a Marine Chemist's instructions on a certificate may specify that a fire watch be placed inside a tank with a charged 1½-inch fire hose. A fire watch who has been trained with a fire extinguisher does not necessarily understand how to use a 1½ inch fire hose. The Committee strongly recommended, and OSHA agrees, that fire watches need particular training if they must deal with this equipment within their shipyard employment.

The Agency proposes that a fire watch be trained to select and operate the different types of fire extinguishers and 1½-inch fire hoses likely to be used by fire watches in the area. In paragraphs (g)(1) and (g)(2) of 29 CFR 1910.157, OSHA requires the employer to train any employee who has been designated to use portable fire extinguishers or, as proposed in paragraph (c)(2)(viii) of this section, fire hose, and to be familiar with the general principles of fire extinguisher use and the hazards of fighting incipient stage fires. Again, OSHA does not believe that adopting this training requirement from part 1910 imposes any new burden on shipyard employers than what currently exists.

Paragraph (c)(2)(ix) of § 1915.508 states that fire watch personnel be trained to be aware of the location and use of barriers that are part of the employer's fire protection program. Throughout the maritime industry, where partial cleaning has been performed, barriers are placed to ensure that product is not returned to the hot work area. Barriers are also used to contain molten metal or sparks from traveling to unclean areas. However, the Committee recognized that barriers can create hazards by blocking an employee's egress or by suppressing ventilation to the point where fumes or vapors can accumulate. A worker who stands fire watch must understand how barriers are used. OSHA is recommending that this provision be included in the training of fire watch personnel.

In paragraph (c)(2)(x) of § 1915.508, OSHA proposes to require that the fire watch be trained in the means of communicating with each worker performing hot work. There was considerable discussion within the Committee workgroup about current industry practices for the fire watch's contact with other workers. One member suggested OSHA incorporate NAVSEA's 009–07 Fire Prevention and Housekeeping (September 13, 1996). However, other workgroup members pointed out that this Navy Standard

Item was written primarily to protect property and that only the parts that addressed the safety of workers would be appropriate for the OSHA proposal. Therefore, the workgroup committee took only certain provisions relating to the safety of workers, including the requirement that the fire watches have a clear view and immediate access to the areas they are watching, from NAVSEA 009–07. However, the workgroup decided that requiring a clear view and access would not adequately protect workers, without also requiring a means of communication between the fire watch and the hot worker. As one member pointed out, communication is important because a fire watch may not be able to see a hot worker when, for example, the fire watch is on the other side of a compartment from the hot worker. In this case, the means may be as simple as tapping on the bulkhead to signal whether the hot worker can continue or must stop, or an electronic communication system such as a two-way radio. The phrase, ''with a clear view and immediate access to the area(s) affected by the hot work,'' was eventually dropped from the training requirements, but substantively added to the duty requirement in paragraph (c)(2)(i) of 1915.504 Fire Watches.

In paragraphs (c)(2)(xi) and (xii) of § 1915.508, OSHA proposes to require that fire watches be trained to know when and how to initiate fire alarm procedures and to be familiar with the shipyard's evacuation plan. OSHA recognizes that fire watch work assignments may change from vessel or vessel sections to a land side facility and that each may have different alarm systems, evacuation plans, and exit routes. For example, the alarm/evacuation systems found in vessels vary significantly among vessels types. The alarm system installed and procedures established on an oiler are far more sophisticated from those found on a VLCC (very large crude carrier). Evacuation procedures and alarm systems will be different in a land side paint facility or machine shop where flammable coatings or cutting oils pose a hazard. However, the Committee concluded that regardless of the system, a primary responsibility of a fire watch must be to recognize when to initiate a fire alarm procedure and begin evacuation. A fire watch needs to know when a fire has progressed beyond the incipient stage, when a fire alarm should be activated, and when evacuation should be initiated. The Committee decided and OSHA agrees not to specify a particular type of alarm system. Both noted that the employers are in the best position to develop their own alarm systems but that fire watches need to be familiar with what the employer has developed or what is already in place in the case of a ship or barge. For example, a yard in the southern area of California could have a Navy vessel, a cruise liner, and a tug under repair at the same time, all with different alarm systems. OSHA believes that the employer must make sure that fire watches are familiar with the type of alarm systems being used on the vessel where they are working. Obviously, if assigned to all three vessels, the fire watch must be familiar with each particular alarm and evacuation scenario.

Paragraph (c)(3) of § 1915.508 continues with fire watch personnel training, specifically, the employer must ensure that each fire watch is trained to alert others to exit the work area whenever: (i) The fire watch perceives an unsafe condition associated with hot work; (ii) the fire watch perceives that a hot worker is in danger; (iii) evacuation is ordered by the employer or designated representative; or (iv) an evacuation signal such as an alarm is activated. A labor union committee member requested that language be added as item (i) to address a situation where an employee perceives an unsafe condition either before beginning work when originally surveying the work area or perhaps when changes in conditions occur during work. The employee should be trained to report the unsafe conditions. The Committee agreed to recommend this requirement.

In shipyard employment, some employers hire contract workers as needed for the sole purpose of fire watch. The employer is ultimately responsible for ensuring that these fire watches are appropriately trained as proposed in § 1915.508(c). One way to do this is for the employer to have a written evaluation of the contractor's training program that the employer could review and thereby ensure compliance with the OSHA standard. Again, OSHA wants to make clear that it is the employer's responsibility to make sure that all fire watches are properly trained.

In paragraph (d) of § 1915.508, OSHA proposes that the employer document that the training required by paragraphs (a), (b), and (c) has been accomplished.

In paragraph (d)(1) of § 1915.508, OSHA proposes to require that the employer document the worker's training by keeping a record of the worker's name, the name of the trainer, the type of training, and the date(s) of the training.

In addition, OSHA proposes in paragraph (d)(2) of § 1915.508 that the employer keep the documentation for at least one year, and, consistent with other OSHA standards, the record must be available for inspection and copying by OSHA personnel on request.

These requirements were fully supported by the members of this Committee. Representatives of management, labor, government, and professional organizations agreed that a training record, because it represents assurance that the worker standing fire watch has been trained, is essential to the safety of the fire watch, the worker doing hot work, and other personnel in the area. Despite the trend toward less recordkeeping, employer representatives believed that making and keeping the training record would not be burdensome and that any resources needed to comply with the recordkeeping would be well spent. Several members noted that fire watch was a very important duty that must be performed by trained personnel. A written record was necessary so that the employer and the workers would be able to find out that the fire watch had been trained and when the training occurred.

The record that must be kept is minimal and need contain only the worker's name, the name of the trainer, the type of training, and the date(s) of the training. It can be kept as part of the worker's personnel file, in a master file of training, or in any other format the employer chooses. A record in an electronic file or database is sufficient. However, regardless of how the record is kept, it must be available for inspection by the persons authorized to see it. To be available means that it can be easily found, so the employer must first decide how the record is to be kept, and then make certain there is access to it, possibly requiring a note or index pointing the searcher toward the information.

The record must be kept until it is replaced by the worker's new training record or for one year from when the record was made in the case of a worker who leaves the workplace or whose duties no longer include fire watch. Representatives of shipyard employers stated that there was no reason to keep records longer. The only important information in the record was that the training had occurred within the required time frame, the type of training, when the training was carried out, and who had given it. For the worker who is separated from the shipyard, OSHA is proposing to require the employer to keep the record for one year from the time it was made. Even

after a worker is no longer a fire watch, the information may be relevant to determining whether the employer's fire watch training program was adequate and for research on the effectiveness of the standard. In addition, the employee or worker representative may need this time to access the records.

OSHA seeks comment on whether the requirement for training record retention should be one or three years.

Section 1915.509 Definitions

OSHA proposes in § 1915.509 to define the terms that OSHA uses in this proposed subpart. Words that OSHA uses only in this subpart that require a definition are included. Terms that OSHA uses in other subparts of part 1915 Occupational Safety and Health Standards for Shipyard Employment, are also included in this section until a new definition section for all of part 1915 is established. At that time, all of the definitions in part 1915 will be combined into one section. The Committee believed that it was necessary to propose these definitions at this time so that readers would understand the proposed regulations clearly.

The Committee formed a work group to develop the definitions for the terms they believed needed to be defined. The work group first met during the July 1997, meeting in Baltimore, MD. The discussion that follows explains the key definitions the work group developed. Not all of the definitions that OSHA proposes in this subpart are discussed. OSHA believes some of the terms have been long understood by employees and employers. However, OSHA encourages the public to comment on any of the definitions.

The Committee agreed that the following terms used in this subpart have definitions that are the same or similar to the definitions found in either parts 1915 or 1910. Therefore, OSHA is not discussing them at this time. These terms are: ''confined space'; ''dangerous atmosphere'' (see 29 CFR 1915.11); ''flammable liquid'' (29 CFR 1910.106); ''incipient stage fire'' (29 CFR 1910.155 (c)(26)); and ''hot work'' (29 CFR 1915.11).

The Committee proposed to define the term ''designated areas'' as an area established for hot work after an assessment of fire hazard potential of facilities, vessels, or vessel sections. The Committee discussed and came to agreement on this definition during the meeting held in Houston, Texas, in February 2002.

OSHA proposes to define the term ''contract employer'' as an employer who performs work for a host employer at the host employer's workplace. The Committee discussed and agreed that this definition is not intended to include employers who provide incidental services that do not directly influence shipyard employment (*e.g.*, mail delivery or office supply services). There are several employee populations that may visit the shipyard for brief periods of time and who have only incidental levels of exposure to hazards that other contract employees may have. The Committee did not want to regulate these populations.

The Committee developed the definition for ''fire response employee'' based upon the definitions used by NFPA in NFPA 1500–2002 and by OSHA in 29 CFR 1910.156, Fire Brigades. OSHA proposes to define the term ''fire response employee'' as a shipyard employee who carries out duties and responsibilities of shipyard firefighting in accordance with the fire safety plan. A fire response employee may be a full-time employee, may occupy any position or rank within the shipyard, and may engage in fire emergency operations.

The Committee adapted the definition for ''fixed extinguishing system'' from the current definition in 29 CFR 1910.155. The Committee discussed and changed the definition because they believed it did not adequately define systems used both in land side facilities and aboard vessels and vessel sections where components may be remotely located from the space where the system will discharge. OSHA is proposing to change the definition to encompass all parts of a fixed extinguishing system regardless of location.

The Committee adapted the definition for ''physically isolated'' from three sources: A proposed change to NFPA 12–2000, Carbon Dioxide Extinguishing Systems (Ex. 20–21); from Coast Guard guidance published in COMDTINST 16000.7, Marine Safety Manual, Volume II, Material Inspection; and from Coast Guard recommendations published in the March/April, 1996, NFPA Journal. (Ex. 20–26). In discussing and developing this definition, the Committee considered the different types of fixed extinguishing systems, including two-phase gaseous/liquid type high pressure systems where the extinguishing agent is stored in cylinders, and low-pressure systems where the agents are refrigerated and stored in large pressure vessels.

OSHA believes that all of the other definitions proposed in this section are ''terms of the industry'' that are universally recognized by shipyard employees and employers. OSHA welcomes comment or questions submitted to the record about definitions for these terms.

V. Summary of the Preliminary Economic and Initial Regulatory Flexibility Screening Analyses

Introduction

OSHA has determined that this proposal is a not economically significant regulatory action under E.O. 12866 and not a major rule under the Congressional Review provisions of the Small Business Regulatory Enforcement Fairness Act. Because this rule has been listed as significant for other reasons in the Regulatory Agenda, OSHA has provided the Office of Information and Regulatory Affairs with an assessment of the costs, benefits and alternatives, as required by section 6(a)(3)(C) of E.O. 12866, which is summarized below.

Executive Order (EO) 12866 requires regulatory agencies to conduct an economic analysis for rules that meet certain criteria. The most frequently used criterion under EO 12866 is that the rule will impose annual costs on the economy of $100 million or more. Neither the benefits nor the costs of this rule exceed $100 million.

The Regulatory Flexibility Act of 1980, as amended in 1996, requires OSHA to determine whether the Agency's regulatory actions will have a significant impact on a substantial number of small entities. Making such a determination for this proposal required OSHA to perform a screening analysis to identify any such impacts. OSHA's screening analysis indicated that the proposed rule will not have significant impacts on a substantial number of small entities.

OSHA's Preliminary Economic Analysis (PEA) and initial regulatory flexibility screening analysis include: A description of the industries potentially affected by the standard; an evaluation of the risks addressed; an assessment of the benefits attributable to the proposed standard; a determination of the technological feasibility of the requirements of the standard; an estimate of the costs employers will incur to comply with the standard; a determination of the economic feasibility of compliance with the standard; and an analysis of the economic and other impacts associated with this rulemaking, including those on small businesses. The PEA has been provided to the docket as (Ex. 15) This section of the preamble summarizes the results of that analysis.

Affected Industries

The proposed Fire Protection in Shipyard Employment standard will

affect all establishments in the ship building, ship breaking and repair industry. These include large shipyards, government shipyards and shipyards operated under Navy contracts, operations owning a dock or drydock, and the vast majority of small firms that perform shipbuilding and repair work, such as metal fabricators, painters, asbestos removal, etc., who do not own or rent docks. For purposes of this analysis OSHA has defined small firms as: (1) Firms with fewer than 1,000 employees (the SBA definition of small businesses in this sector); (2) firms with fewer than 250 employees (the definition of small business recommended by the negotiated rulemaking committee); and (3) firms with fewer than 20 employees. OSHA has based its estimates of number of firms, establishments, employment and wages on general BLS and Department of Commerce data for the standard industrial classification (SIC) codes for ship building 3731 and ship breaking 4499. OSHA has based its estimates concerning revenues of firms on SBA data, and concerning profit rates on Robert Morris Associates data. Table V–1 shows the total number of establishments, number of firms, employment, and revenues and profits per firm affected by the rule. As the table shows there are 717 establishments owned by 669 firms in the industries. The industries employ 97,822 workers, of whom 70 percent are production employees.

TABLE V–1.—INDUSTRIAL PROFILE OF EMPLOYEES AND ESTABLISHMENTS

Industry characteristic	1–19 Employees	1–250 Employees	1–1,000 Employees	>1,000 Employees	Entire affected industry
Total Establishments	412	621	697	20	717
Total Firms	412	607	660	9	669
Employees	2,305	14,774	39,063	58,759	97,822
Revenues Per Firm ($1,000's)	$653	$2,353	$5,907	$718,166	$15,540
Profits Per Firm ($1,000)	$24	$85	$213	$25,854	$559

Source: Office of Regulatory Analysis, OSHA.

Evaluation of Risk and Potential Benefits

For this Preliminary Economic Analysis, OSHA developed a profile of the risks facing workers in shipyards that might be affected by the standard. OSHA's risk profile for exposure to fire based risks in shipyards is based on data from the Bureau of Labor Statistics' National Census of Fatal Occupational Injuries, data from the Bureau's Survey of Occupational Injuries and Illnesses, and an analysis of OSHA fatality/catastrophe inspection data obtained from the Agency's Integrated Management Information System.

OSHA anticipates that the proposed standard will significantly reduce the number of fire and explosion related incidents and resulting injuries and fatalities currently reported in the shipyard industry. OSHA believes that the proposed standard's requirements for inspection prior to hot work, fire watches, planning and training will help to save lives and prevent injuries in the shipyard workforce. OSHA estimates that approximately 1 fatality, 110 injuries involving days away from work and 204 injuries not involving days away from work occur annually among shipyard workers due to fire and explosions; this is the current industry risk baseline used in this analysis. OSHA projects that full compliance with the proposed standard would annually prevent 0.88 fatalities, 102 of these injuries involving days away from work, and 190 of the injuries not involving days away from work.

In addition to saving lives and improving overall safety in shipyards, OSHA believes that full compliance with the proposed standard would yield substantial cost savings to parties within and connected with the industry and ultimately to society as a whole. These monetized benefits take the form of reductions in employer and insurer accident-related costs in several areas: Value of lost output associated with temporary total disabilities and permanent partial disabilities, an income-based measure derived from estimates of workers' compensation indemnity payments; reductions in accident-related medical costs; administrative expenses incurred by workers' compensation insurers; and indirect costs related to productivity losses, work stoppages, and accident investigations and reports. Applying data from the construction and insurance industries on the direct costs of accidents and data from the literature on the indirect costs of accidents and other administrative-related costs to OSHA's preliminary estimate of avoided injuries, the Agency monetized the value of the cost savings employers and society will accrue by avoiding these injuries. OSHA estimates that annual costs savings of $6.2 million will result from compliance with the proposed rule. These savings are those associated with injuries due to fires. OSHA did not attempt to quantify the cost savings resulting from reduced fire damage to property and reduced need to respond to fires.

Thus, OSHA estimates that the proposed standard will prevent 292 injuries and one death per year. As a result of prevention of the injuries, OSHA estimates that there will be direct cost savings of $6.2 million per year, excluding savings associated with reduced property damage and reduced fire response costs.

Only some of these direct cost savings accrue directly to employers in the form of reduced workers' compensation payments and administrative cost. Other cost savings represent increased income to employees and greater tax collections by the government. Even the portion of direct cost savings that accrue directly to employers may not be a saving to the employer of the injured employee because of the risk spreading effects of workers' compensation insurance. The issue of the extent to which the direct cost savings are an economic motivation for employers is discussed in detail in the final chapter of the Preliminary Economic and Initial Regulatory Flexibility Screening Analysis.

Technological Feasibility and Compliance Costs

Consistent with the legal framework established by the OSH Act, Executive Order 12866 and court decisions, OSHA has assessed the technological feasibility of the proposed fire protection in shipyards standard. The standard does not require any practices not already undertaken in many shipyards today. Moreover, the proposed standard is based on a consensus draft recommended to the Agency by a negotiated rulemaking committee consisting of representatives from labor, government, industry in particular divergent industry interests, including small employers, who would

be affected by any changes to the maritime regulations. The committee reached consensus on the language of the draft, thereby implicitly acknowledging the feasibility of the proposed revisions to the standard. Therefore, based on the fact that many firms in the industry are already implementing the controls and practices required by the proposed standard and that the negotiated rulemaking committee reached consensus on the draft underlying the proposed revisions, OSHA has preliminarily determined that the proposed fire protection in shipyards standard is technologically feasible.

OSHA developed estimates of the costs of compliance for shipyard employers subject to the proposed standard. To develop these estimates OSHA first examined the extent to which shipyard employers were already in compliance with the requirements of the standard as a result of existing OSHA requirements, compliance with rules of other parties (such as the U.S. Navy in some shipyards) and compliance with voluntary codes and good practices. Eliminating provisions for which there is already substantial compliance, OSHA arrived at the list of activities for which shipyard employers would incur costs shown in Table V–2. Table V–2 shows that the annualized costs of the proposed standard are $4.3 million per year. Ninety-one percent of the costs are associated with fire watch-related provisions; most of these costs are for posting additional fire watch personnel in situations in which fire watches are not currently being posted.

TABLE V–2. TOTAL ANNUALIZED COMPLIANCE COST PER REQUIREMENT FOR THE PROPOSED STANDARD

Requirement	Annualized cost
Posting Fire Watches	$3,789,057
Safe Work Practices	245,839
Fire Watch Written Program	36,546
Fire Response Policy	11,630
Fire Safety Plan	36,546
Fire Watch Training	95,204
Fire Safety Plan Review/ General Training	37,327
Fire Protection Systems Training	9,642
Fire Response Training	49,430
Total	4,261,222

Numbers do not total due to rounding.
Source: Office of Regulatory Analysis, OSHA.

Economic Impacts

OSHA analyzed the impacts of these compliance costs on firms in the shipbuilding sector. In order to do this, OSHA determined costs as a percentage of revenues and costs as a percentage of profits. These two measures (in percent) correspond to two assumptions used by economists to bound the range of possible impacts: the assumption of no-cost pass-through, *i.e.*, that employers will be unable to pass any of the costs of compliance forward to their customers (compliance costs as a percentage of profits), and the assumption of full-cost pass-through (compliance costs as a percentage of revenues), *i.e.*, that employers will be able to pass all of the costs of compliance forward to their customers. As summarized in Table V–3, below, OSHA estimates that, if affected firms in the ship building sector were forced to absorb these compliance costs entirely from profits (a highly unlikely scenario), profits would be reduced by an average of 1.14 percent. If, at the other extreme, affected firms were able to pass all of these compliance costs forward to their customers, OSHA projects that the price (revenue) increase required to pay for these costs would be less than 0.1 percent (0.04 percent). Given the minimal impact on both prices and profits, OSHA preliminarily concludes that the regulation is economically feasible.

TABLE V–3. ECONOMIC IMPACTS FOR THE PROPOSED STANDARD

Firm size	Compliance costs as a percentage of revenues	Compliance costs as a percentage of profits
All Firms	0.04	1.14
1–19 Employees	0.11	3.09
1–250 employees	0.07	1.83
1–1000 Employees (SBA Definition)	0.06	1.61

Source: Office of Regulatory Analysis, OSHA.

Regulatory Flexibility Screening Analysis

The Regulatory Flexibility Act of 1980 (RFA), as amended in 1996 (5 U.S.C. 601 *et seq.*), requires regulatory agencies to determine whether regulatory actions will adversely affect small entities. The Small Business Administration (SBA) defines small entities, or ''concerns,'' in terms of number of employees or annual receipts. For employers in SIC 3731, small firms are defined by SBA as those with less than 1,000 employees. As shown in Table VI–3, for firms with less than 1,000 employees, costs are 1.61 percent of profits and 0.06 percent of revenues. OSHA also examined costs as a percentage of profits and revenues for firms with less than 250 employees, as recommended by the negotiated rulemaking committee, and for firms with less than 20 employees to see whether there might be significant impacts on the very smallest firms. For firms with less than 250 employees, costs were 1.83 percent of profits and 0.07 percent of revenues. For firms with less than 20 employees, costs were 3.09 percent of profits and 0.11 percent of revenues.

A major source of these disparate impacts is lower levels of baseline compliance by small firms. Although the economic impacts on the smallest size class of employers are low, they are somewhat higher than for larger employers. The Agency is interested in hearing from smaller employers about disparate impacts on small employers. Do small employers believe there will be a greater impact on them than on larger employers? Is there a way to reduce these impacts?

OSHA has set the criteria that if costs exceed one percent of revenues or five percent of profits, then the impact on small entities is considered significant for purposes of complying with the RFA. For all of the classes of affected small firms in the shipbuilding and repair and shipbreaking sectors, costs were less than one percent of revenues and five percent of profits. OSHA therefore certifies that this regulation will not have an economically significant impact on a substantial number of small entities.

VI. OMB Review Under the Paperwork Reduction Act of 1995

The proposed rule for Fire Protection in Shipyard Employment contains several collections of information (paperwork) requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA–95), 44 U.S.C. 3501 *et seq.*, and its regulation at 5 CFR 1320. OMB is currently reviewing OSHA's request for approval of the proposed collections. OSHA solicits comments on the collection of information requirements and the estimated burden hours associated with these collections, including comment on the following:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

OSHA estimates the total burden hours associated with all of the collection of information requirements at 5,625 burden hours in the first year and 5,241 burden hours in the second and subsequent years. A collection of information is defined in PRA–95 to mean, ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format.'' (44 U.S.C. 3502(3)(A)). Each of the collections is summarized below.

• *1915.501—General Provisions*

Paragraph (d)(1)(i) of this section requires the host employer on multi-employer worksites to inform all employers (contract employers) at the worksite about the content of the host employer's fire safety plan.

Paragraph (d)(2)(i) of this section requires that contract employers make sure the host employer is aware of fire hazards associated with the contract work and how the contract employer will address those hazards. In addition, paragraph (d)(2)(ii) requires the contract employer to identify hazards that arise during the course of work that were not identified as part of the information transfer required by paragraph (d)(2)(i) described above.

• *1915.502—Fire Safety Plan*

Paragraph (a) of this section requires the employer to develop a written fire safety program covering the elements listed in paragraph (b), including the following information:

(1) The identification of the significant potential fire risks;

(2) Procedures for recognizing and reporting unsafe conditions;

(3) Alarm procedures;

(4) Procedures for notifying employees of a fire emergency;

(5) Procedures for notifying fire response organizations of a fire emergency;

(6) Procedures for evacuation;

(7) Procedures to account for all employees after an evacuation; and

(8) Names, job titles, or department for individuals who can be contacted for further information about the plan.

Paragraph (c) requires the employer to review the fire safety plan with each affected employee at the following times:

(1) Within 90 days of the effective date of the standard;

(2) Upon initial assignment for new employees; and

(3) When there is a change in the plan or a change of the employee's duties.

Paragraph (d) specifies the following:

(1) The plan be kept accessible to employees, employer representatives, and to OSHA;

(2) The plan be updated when necessary, but no less than annually;

(3) The employer certify in writing that each employee was informed about the plan; and

(4) A copy of the plan be given to outside fire response organizations who may be expected to respond to fires at the employer's worksite.

• *1915.504—Fire Watches*

Paragraph (a) requires the employer to prepare and keep current, a written policy specifying the following information:

(1) The training employees must be given;

(2) The duties employees are to perform;

(3) The equipment employees must be given; and

(4) The personal protective equipment (PPE) employees must be given as required in 29 CFR part 1915, subpart I, Personal Protective Equipment.

• *1915.505—Fire Response*

Paragraph (a)(2) requires employers to create, maintain, and update a written statement or policy that describes the internal and outside fire response organizations that the employer will use.

Paragraph (b)(1) lists the information to be included in the statement or policy if internal fire response is to be used. The information includes the following:

(1) The basic structure of the fire response organization;

(2) The number of trained fire response employees;

(3) The fire response functions that may need to be carried out;

(4) The minimum number of fire response employees necessary, the number and types of apparatus, and a description of the fire suppression operations established by written standard operating procedures for each type of fire response at the employer's facility;

(5) The type, amount, and frequency of training that must be given to fire response employees; and

(6) The procedure for use of protective clothing and equipment.

Paragraph (b)(2) lists the information to be included in the statement or policy if outside fire response is to be used. The information includes the following:

(1) The types of fire suppression incidents to which the fire response organization is expected to respond at the employer's facility or worksite;

(2) The liaisons between the employer and the outside fire response organization; and

(3) A plan for fire response functions that:

(A) Addresses procedures for obtaining assistance from other fire response organizations;

(B) Familiarizes the outside fire response organization with the layout of the employer's facility or worksite, including access routes to controlled areas, and site-specific operations, occupancies, vessels or vessel sections, and hazards;

(C) Sets forth how hose and coupling connection threads are to be made compatible and includes where the adapter couplings are kept; or

(D) States that the employer will not allow the use of incompatible hose connections.

Paragraph (b)(3) lists the information to be included in the statement or policy where a combination of internal and outside fire response is to be used. The information includes all the information from paragraphs (b)(1) and (b)(2) as listed above and the following information:

(1) The basic organizational structure of the combined fire response;

(2) The number of combined trained fire responders;

(3) The fire response functions that need to be carried out;

(4) The minimum number of fire response employees necessary, the number and types of apparatus, and a description of the fire suppression operations established by written standard operating procedures for each particular type of fire response at the worksite; and,

(5) The type, amount, and frequency of joint training that must be given to fire response employees.

Paragraph (a)(3) requires employers to create, maintain, and update a written statement or policy that defines the evacuation procedures employees must follow, if the employer chooses to require a total or partial evacuation of the worksite at the time of a fire. Paragraph (b)(4) prescribes the employee evacuation information that must be included in the employer's policy statement required by (a)(3). That information includes the following:

(1) Emergency escape procedures;

(2) Procedures to be followed by employees who may remain longer at the worksite to perform critical shipyard employment operations during the evacuation;

(3) Procedures to account for all employees after emergency evacuation is completed;

(4) The preferred means of reporting fires and other emergencies; and

(5) Names or job titles of the employees or departments to be contacted for further information or explanation of duties.

Paragraph (b)(5) prescribes the rescue and emergency response information that must also be included in the employer's policy statement required in paragraph (a)(3). That information includes the following:

(1) A description of the emergency rescue procedures; and

(2) Names or job titles of the employees who are assigned to perform them.

Paragraph (c)(2) requires that fire response employees who are required to wear respirators meet the medical requirements of the Respiratory Protection Program Standard in 1915.154. The paperwork burden for the respiratory protection requirements has been approved under OMB Control Number 1218–0099.

Paragraph (c)(3) requires annual medical exams for all fire response employees. There is no burden or cost for these medical exams because all employees affected, as a usual and customary practice, are now receiving the medical exams.

Paragraph (c)(5) requires that the medical records of fire response employees be kept as required in 1915.1020. The paperwork burden for access to medical records is approved under OMB Control Number 1218–0065.

Paragraph (d)(2) requires the employer to set up written:

(1) Administrative regulations;

(2) Operating procedures; and

(3) Departmental orders for fire response functions

Paragraph (d)(3) requires the employer to set up an incident management system (IMS) to coordinate and direct fire response functions, including the following:

(1) Specific fire emergency responsibilities;

(2) Accountability for all fire response employees participating in an emergency operation; and,

(3) Resources offered by outside organizations.

Paragraph (d)(4) requires the employer to provide the information [required by (d)(2) and (d)(3)] to the outside fire response organization to be used.

• *1915.506—Hazards of Fixed Extinguishing Systems on Board Vessels and Vessel Sections*

Paragraph (b)(2) requires certain employers (those who have employees exposed to fixed extinguishing systems that could create a hazardous atmosphere when activated aboard vessels and vessel sections) to ensure that employees are trained to recognize systems discharge and evacuation alarms and to recognize the appropriate escape routes.

• *1915.507—Landside Fire Protection Systems*

Paragraph (c)(2) requires employers to notify employees and take the necessary precautions to make sure employees are safe from fire if for any reason a fire extinguishing system stops working, until the system is working again.

Paragraph (c)(5) requires the employer to post hazard warning or caution signs at both the entrances to and inside of areas protected by fixed extinguishing systems that use extinguishing agents in concentrations known to be hazardous to employee safety or health.

• *1915.508—Training*

Paragraph (a) of this section requires the employer to train affected employees when they first start working and also when necessary to maintain proficiency in the five specific areas listed in paragraph (a)(1) to (a)(5).

Paragraph (b) of this section specifies the training requirements for employees designated to perform fire response activities.

Paragraph (b)(1) requires the employer to have a written training policy stating that fire response employees are to be trained and capable of carrying out their duties and responsibilities at all times. Because OSHA specifies the wording for the training policy, there is no burden associated with this collection of information requirement.

Paragraph (b)(2) requires the employer to keep written standard operating procedures that address anticipated emergency operations and to update these procedures as necessary. Note that operating procedures are also required in 1915.505(d)(2).

Paragraph (b)(4) requires the employer to provide training for fire response employees that ensures they are capable of carrying out their duties and responsibilities under the employer's standard operating procedures (see (b)(2) above).

Paragraph (b)(5) requires employers to train new fire response employees before they engage in emergency operations and paragraph (b)(6) requires employers to train fire response employees who are expected to fight fires according to the written operating procedures (see (b)(2) above) at least quarterly.

Paragraphs (b)(7) to (b)(10) specifies criteria for the instructors and the training methods.

Paragraph (c) specifies requirements related to the training of employees assigned to fire watch duty. Paragraph (c)(1)(i) to (iv) specify the intervals of training, including:

(1) Before being assigned to fire watch duty;

(2) Whenever there is a change in operation that presents a new or different hazards;

(3) Whenever the employer has reason to believe that the fire watch's knowledge or understanding of the training previously provided is inadequate; and,

(4) Re-training annually.

Paragraph (c)(2) specifies 12 areas on which the fire watch must be trained.

Paragraph (c)(3) specifies 4 additional areas on which the fire watch must be trained.

Paragraph (d) requires that employers keep records that demonstrate that employees have been trained as required by paragraphs (a), (b), and (c). The records must include the following information:

(1) The employee's name;

(2) The trainer's name;

(3) The types of training, and

(4) The date(s) on which the training took place.

Paragraph (d)(2) requires the employer to keep each training record for one year from the time it was made or until it is replaced, whichever is shorter, and to make it available for inspection and copying by OSHA personnel on request.

OSHA will use the records developed in response to this Standard to determine compliance with the safety and health provisions of the Standard. The employer's failure to generate and disclose the information required in this Standard will affect significantly OSHA's effort to control and reduce injuries and fatalities related to fires in shipyard employment.

Interested persons may submit comments regarding the burden estimates or other aspects of this collection of information to the OSHA Docket Office, Docket No. S–051, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 (Attn: OSHA Desk Officer (RIN 1218–AB51)).

The complete Information Collection Request (ICR), including the supporting

rationale is available for inspection and copying in the OSHA Docket Office or the ICR can be mailed to persons who request a copy by telephoning Todd Owen at (202) 693–1941 or Theda Kenney at (202) 693–2044.

VII. Public Participation

Interested persons are requested to submit written data, views, and arguments concerning this proposal. These comments must be received by March 11, 2003, and submitted in triplicate to the Docket Office; Docket No. S–051, Room N2624, U.S. Department of Labor, Occupational Safety and Health Administration; 200 Constitution Ave., NW., Washington, DC 20210.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in triplicate to the Docket office at the above address and must comply with the following conditions:

1. The objection must include the name and address of the objector;
2. The objections must be received by March 11, 2003;
3. The objections must specify with particularity grounds upon which the objection is based;
4. Each objection must be separately numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may, of course, make those objections and their recommendations in their comments and OSHA will fully consider them. There is only need to file formal ''objections'' separately if the interested person requests a public hearing.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information that may be available, in order that the record of this rulemaking will present a complete picture of the public response on the issues involved.

VIII. State Plan Standards

This **Federal Register** document issues a proposal for new and revised rules addressing fire protection in shipyard employment regulated in 29 CFR 1915. The rules when final will be codified into the applicable section of the Code of Federal Regulations.

The 26 states or U.S. Territories with their own OSHA approved occupational safety and health plans must develop a comparable standard applicable to both the private and public (state and local government employees) sectors within six months of the publication date of a permanent final Federal rule or show OSHA why there is no need for action, *e.g.* because an existing state standard covering this area is already ''at least as effective as'' the new Federal standard. Three states and territories cover only the public sector (Connecticut, New York, and New Jersey).

Currently five states (California, Minnesota, Oregon, Vermont and Washington) with their own state plans cover private sector onshore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage of maritime activities in Federal OSHA states and in the following State Plan states: Alaska, Arizona, Connecticut (plan covers only state and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Jersey (plan covers only state and local government employees), New Mexico, New York (plan covers only state and local government employees), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in those States.

IX. Federalism

The standard has been reviewed in accordance with Executive order 13132 (64 FR 43255; August 10, 1999) regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Federal standards on shipyard employment operations address hazards which are not unique to any one state or region of the country. Nonetheless, those States that have elected to participate under section 18 of the OSH Act would not be preempted by this final regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard.

X. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this rule does not include any federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

List of Subjects in 29 CFR 1915

Hazardous substances, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements, and Vessels.

XI. Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The proposed sections 4, 6, and 8 of the Ocupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No 3–2000 (65 FR 50017); and 29 CFR part 1915.

Signed in Washington, DC, this 25th day of November 2002.

John L. Henshaw,

Assistant Secretary of Labor.

For the reasons set forth in the preamble, OSHA proposes to amend 29 CFR chapter XVII as follows:

PART 1915—[AMENDED]

Subpart D—[Amended]

1. The authority citation for part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (65 FR 50017) as applicable.

§ 1915.52 [Removed]

§ 1915.55 [Amended]

2. Subpart D—Welding, Cutting and Heating of part 1915 is amended by removing § 1915.52, and by removing and reserving § 1915.55(d),(f), and (g).

3. Part 1915 is amended by adding a new subpart, subpart P to read as follows:

Subpart P—Fire Protection in Shipyard Employment.

Sec.

1915.501 General provisions.
1915.502 Fire safety plan.
1915.503 Precautions for hot work.
1915.504 Fire watches.
1915.505 Fire response.
1915.506 Hazards of fixed extinguishing systems on board vessels and vessel sections.
1915.507 Land side fire protection systems.
1915.508 Training.
1915.509 Definitions applicable to this subpart.

§ 1915.501 General provisions.

(a) *Purpose.* The purpose of the standard in this subpart is to require employers to protect all employees from fire hazards in shipyard employment, including employees engaged in fire response activities.

(b) *Scope.* This subpart covers employers with employees engaged in shipyard employment aboard vessels, vessel sections, or on land side operations regardless of geographic location.

(c) *Employee participation.* The employer must provide ways for employees and employee representatives to participate in developing and periodically reviewing programs and policies adopted to comply with this subpart.

(d) *Multi-employer worksites.* (1) *Host employer responsibilities.* The host employer's responsibilities are to:

(i) Inform all employers at the worksite about the content of the fire safety plan including hazards, controls, fire safety and health rules, emergency procedures; and

(ii) Make sure the safety and health responsibilities for fire protection are assigned as appropriate to other employers at the worksite.

(2) *Contract employer responsibilities.* The contract employer's responsibilities are to:

(i) Make sure that the host employer knows about the fire related hazards associated with the contract employer's work and what the contract employer is doing to address them; and

(ii) Advise the host employer of any previously unidentified fire related hazards that the contract employer identifies at the worksite.

§ 1915.502 Fire safety plan.

(a) *Employer responsibilities.* The employer must develop and implement a written fire safety plan that covers all the actions that employers and employees must take to ensure employee safety in the event of a fire.

Note to paragraph (a): See appendix A to this subpart for a Model Fire Safety Plan.

(b) *Plan elements.* The employer must include the following information in the Fire Safety Plan:

(1) Identification of the significant potential fire risks;

(2) Procedures for recognizing and reporting unsafe conditions;

(3) Alarm procedures;

(4) Procedures for notifying employees of a fire emergency;

(5) Procedures for notifying fire response organizations of a fire emergency;

(6) Procedures for evacuation;

(7) Procedures to account for all employees after an evacuation; and

(8) Names, job titles, or departments for individuals who can be contacted for further information about the plan.

(c) *Reviewing the plan with employees.* The employer must review the plan with each affected employee at the following times:

(1) Within 90 days of the effective date of this subpart for employees who are currently working;

(2) Upon initial assignment for new employees; and

(3) When the actions the employee must take under the plan change because of a change in duties or a change in the plan.

(d) *Additional employer requirements.* The employer also must:

(1) Keep the plan accessible to employees, employee representatives, and OSHA;

(2) Review and update the plan whenever necessary, but at least annually;

(3) Certify in writing that each affected employee has been informed about the plan as required by paragraph (c) of this section; and

(4) Give a copy of the plan to any outside fire response organization that the employer expects to respond to fires at the employer's worksite, regardless of geographic location of that worksite.

(e) *Contract employers.* Contract employers in shipyard employment must have a fire safety plan for their employees, and this plan must comply with the host employer's fire safety plan.

§ 1915.503 Precautions for hot work.

(a) *General requirements*—(1) *Designated Areas.* The employer may only designate areas for hot work in sites such as vessels and vessel section area, fabricating shops, and subassembly areas that do not contain potential fire hazards.

(2) *Non-designated Areas*—(i) Before authorizing hot work, the employer must visually inspect the area where hot work is to be performed, including adjacent spaces, to identify potential fire hazards, unless a Marine Chemist's certificate or shipyard Competent Person's log is used for the authorization.

(ii) The employer shall authorize employees to perform hot work only in areas that are free of fire hazards, or that have been controlled by physical isolation, fire watches, or other positive means.

Note to paragraph (a)(2): The requirements of this standard apply to all hot work operations in shipyard employment except those covered in subpart B of this part.

(b) *Specific requirements*—(1) *Maintaining fire hazard-free conditions.* The employer must keep all hot work areas free of hazards that may cause or contribute to the spread of fire.

Note to paragraph (b)(1): Unexpected energizing and energy release are covered by 29 CFR 1915.181, subpart L. Exposure to toxic and hazardous substances is covered in 29 CFR 1915.1000–1915.1450, subpart Z.

(2) *Fuel gas and oxygen supply lines and torches.* The employer must make sure that:

(i) No unattended fuel gas and oxygen hose lines or torches are in confined spaces;

(ii) No unattended charged fuel gas and oxygen hose lines or torches are in enclosed spaces for more than 15 minutes;

(iii) All fuel gas and oxygen hose lines are disconnected at the supply manifold at the end of each shift; and

(A) All disconnected fuel gas and oxygen hose lines are rolled back to the supply manifold or to open air to disconnect the torch; or

(B) Extended fuel gas and oxygen hose lines are not reconnected at the supply

manifold unless the lines are given a positive means of identification when they were first connected and a drop test is done using gauges or other positive means to ensure the integrity of fuel gas and oxygen burning system.

§ 1915.504 Fire watches.

(a) Written fire watch policy. The employer must create and keep current a written policy that specifies the following requirements for employees performing fire watch in the workplace:

(1) The training employees must be given;

(2) The duties employees are to perform;

(3) The equipment employees must be given; and

(4) The personal protective equipment (PPE) employees must be given as required in 29 CFR Part 1915, subpart I.

(b) *Posting fire watches.* The employer must post a fire watch if during hot work:

(1) Slag, weld splatter, or sparks might pass through an opening and cause a fire;

(2) Fire-resistant guards or curtains are not used to prevent ignition of combustible materials on or near decks, bulkheads, partitions, or overheads;

(3) Combustible material closer than 35 ft. (10.7m) to the hot work in either the horizontal or vertical direction cannot be removed, protected with flame-proof covers, or otherwise shielded with metal or fire-resistant guards or curtains, so that the material will not be ignited by the hot work;

(4) On or near insulation, combustible coatings or sandwich-type construction on either side cannot be shielded, cut back or removed, or the space inerted;

(5) Combustible materials adjacent to the opposite sides of bulkheads, decks, overheads, metal partitions, or of sandwich-type construction may be ignited by conduction or radiation;

(6) The hot work is close enough to cause ignition through heat radiation or conduction on the following:

(i) Insulated pipes, bulkheads, decks, partitions, or overheads; or

(ii) Combustible materials and/or coatings.

(7) The work is close enough to unprotected combustible pipe or cable runs to cause ignition; or

(8) A Marine Chemist, a Coast Guard-authorized person, or a shipyard Competent Person, as defined in 29 CFR part 1915, subpart B, requires that a fire watch be posted.

(c) *Assigning employees to fire watch duty.* (1) The employer must not assign other duties to an employee assigned to fire watch;

(2) Employers must ensure that employees assigned to fire watch duty:

(i) Have a clear view of and immediate access to all areas included in the fire watch;

(ii) Are able to communicate with workers exposed to hot work, if necessary;

(iii) Remain in the hot work area for at least 30 minutes after completion of the hot work, unless the employer or his or her representative surveys the exposed area and makes a determination that there is no further fire hazard;

(iv) Are trained to detect fires that occur in areas exposed to the hot work;

(v) Attempt to extinguish any incipient stage fires in the hot work area that are within the capability of available equipment and within the fire watch's training qualifications, as defined in § 1915.508 of this Part;

(vi) Alert employees of any fire beyond the incipient stage; and

(vii) If unable to extinguish fire in the areas exposed to the hot work, activate the alarm to start the evacuation procedure in accordance with the employer's fire prevention plan.

§ 1915.505 Fire response.

(a) *Employer responsibilities.* The employer must:

(1) Decide what type of response will be provided and who will provide it;

(2) Create, maintain, and update a written statement or policy that describes the internal and outside fire response organizations that the employer will use; and

(3) Create, maintain, and update a written statement or policy that defines what evacuation procedures employees must follow, if the employer chooses to require a total or partial evacuation of the worksite at the time of a fire.

(b) *Required written policy statement information.* (1) *Internal fire response.* If an internal fire response is to be used, the following information must be included in the employer's policy statement:

(i) The basic structure of the fire response organization;

(ii) The number of trained fire response employees;

(iii) The fire response functions that may need to be carried out;

(iv) The minimum number of fire response employees necessary, the number and types of apparatus, and a description of the fire suppression operations established by written standard operating procedures for each type of fire response at the employer's facility;

(v) The type, amount, and frequency of training that must be given to fire response employees; and

(vi) The procedure for use of protective clothing and equipment.

(2) *Outside fire response.* If an outside fire response organization is used, the following information must be included in the employer's policy statement:

(i) The types of fire suppression incidents to which the fire response organization is expected to respond at the employer's facility or worksite;

(ii) The liaisons between the employer and the outside fire response organizations;

(iii) A plan for fire response functions that:

(A) Addresses procedures for obtaining assistance from other fire response organizations;

(B) Familiarizes the outside fire response organization with the layout of the employer's facility or worksite, including access routes to controlled areas, and site-specific operations, occupancies, vessels or vessel sections, and hazards; and

(C) Sets forth how hose and coupling connection threads are to be made compatible and includes where the adapter couplings are kept; or

(D) States that the employer will not allow the use of incompatible hose connections.

(3) *A combination of internal and outside fire response.* If a combination of internal and outside fire response is to be used, the following information, in addition to the requirements in paragraphs (b)(1) and (2) of this section, must be included in the employer's policy statement:

(i) The basic organizational structure of the combined fire response;

(ii) The number of combined trained fire responders;

(iii) The fire response functions that need to be carried out;

(iv) The minimum number of fire response employees necessary, the number and types of apparatus, and a description of the fire suppression operations established by written standard operating procedures for each particular type of fire response at the worksite;

(v) The type, amount, and frequency of joint training that must be given to fire response employees;

(4) *Employee evacuation.* The employer must include the following information in the employer's policy statement:

(i) Emergency escape procedures;

(ii) Procedures to be followed by employees who may remain longer at the worksite to perform critical shipyard employment operations during the evacuation;

(iii) Procedures to account for all employees after emergency evacuation is completed;

(iv) The preferred means of reporting fires and other emergencies; and

(v) Names or job titles of the employees or departments to be contacted for further information or explanation of duties.

(5) *Rescue and emergency response.* The employer must include the following information in the employer's policy statement:

(i) A description of the emergency rescue procedures; and

(ii) Names or job titles of the employees who are assigned to perform them.

(c) *Medical requirements for shipyard fire response employees.* The employer must make sure that:

(1) All fire response employees receive medical examinations to assure that they are physically and medically fit for the duties they are expected to perform;

(2) Fire response employees who are required to wear respirators in performing their duties meet the medical requirements of 29 CFR 1915.154;

(3) Each fire response employee has an annual medical examination;

(4) The medical records of fire response employees are kept in accordance with 29 CFR 1915.1020.

(d) *Organization of internal fire response functions.* The employer must:

(1) Organize fire response functions to ensure enough resources to conduct emergency operations safely;

(2) Set up written administrative regulations, standard operating procedures, and departmental orders for fire response functions; and

(3) Set up an incident management system (IMS) to coordinate and direct fire response functions, including:

(i) Specific fire emergency responsibilities;

(ii) Accountability for all fire response employees participating in an emergency operation; and

(iii) Resources offered by outside organizations.

(4) Provide this information to the outside fire response organization to be used.

(e) *Personal protective clothing and equipment for fire response employees.*—(1) *General requirements.* The employer must:

(i) Supply to all fire response employees, at no cost, the appropriate personal protective clothing and equipment they may need to perform expected duties; and

(ii) Make sure that fire response employees wear the appropriate personal protective clothing and use the equipment when necessary, to protect them from hazardous exposures.

(2) *Thermal stability and flame resistance.* The employer must:

(i) Make sure that each fire response employee exposed to the hazards of flame does not wear clothing that could increase the extent of injury that could be sustained; and

(ii) Prohibit wearing clothing made from acetate, nylon, or polyester, either alone or in blends, unless it can be shown:

(A) That the fabric will withstand the flammability hazard that may be encountered; or

(B) That the clothing will be worn in such a way to eliminate the flammability hazard that may be encountered.

(3) *Respiratory protection.* The employer must:

(i) Provide self-contained breathing apparatus (SCBA) to all fire response employees involved in an emergency operation in an atmosphere that is immediately dangerous to life or health (IDLH), potentially IDLH, or unknown:

(ii) Provide self-contained breathing apparatus (SCBA) to fire response employees performing emergency operations during hazardous chemical emergencies that will expose them to known chemicals in vapor form or to unknown chemicals;

(iii) Provide fire response employees who perform or support emergency operations that will expose them to chemicals in liquid form, either:

(A) Self-contained breathing apparatus (SCBA), or

(B) Respiratory protective devices certified by NIOSH under 42 CFR part 84 as suitable for the specific chemical environment.

(iv) Ensure that additional outside air supplies used in conjunction with SCBA result in positive pressure systems that are certified by NIOSH under 42 CFR part 84;

(v) Provide only SCBA that meet the requirements of NFPA 1981–1997, *Standard on Open-Circuit Self-Contained Breathing Apparatus for Firefighters* (incorporated by reference in § 1915.5); [1] and

(vi) Ensure that the respiratory protection program and all respiratory protection equipment comply with 29 CFR 1915.154.

(4) *Interior structural firefighting operations.* The employer must:

(i) Supply at no cost to all fire response employees exposed to the hazards of shipyard fire response, a protective coat and trousers or a protective coverall along with a helmet, gloves, footwear, and protective hoods; and

(ii) Ensure that this equipment meets the applicable requirements of NFPA 1971–2000, *Standard on Protective Clothing Ensemble for Structural Firefighting* (incorporated by reference in § 1915.5).

(5) *Proximity firefighting operations.* The employer must: Provide, at no cost, to all fire response employees who are exposed to the hazards of proximity firefighting, appropriate protective proximity clothing meets the applicable requirements of NFPA 1976–2000, *Standard on Protective Clothing for Proximity Firefighting* (incorporated by reference in § 1915.5).

(6) *Personal Alert Safety System (PASS) devices.* The employer must:

(i) Provide each fire response employee involved in firefighting operations with a PASS device; and

(ii) Ensure that each PASS device meets the requirements of NFPA 1982–1998, *Standard on Personal Alert Safety Systems (PASS) for Firefighters* (incorporated by reference in § 1915.5).

(7) *Life safety ropes, body harnesses, and hardware.* The employer must ensure:

(i) That all life safety ropes, body harnesses, and hardware used by fire response employees for emergency operations meet the applicable requirements of NFPA 1983–2001, *Standard on Fire Service Life Safety Rope, Harnesses, and Hardware* (incorporated by reference in § 1915.5);

(ii) That fire response employees use only class I body harnesses to attach to ladders and aerial devices; and

(iii) That fire response employees use only class II and class III body harnesses for fall arrest and repelling operations.

(f) *Equipment maintenance.* (1) *Personal protective equipment.* The employer must inspect and maintain personal protective equipment used to protect fire response employees to ensure that it provides the intended protection.

(2) *Fire response equipment.* The employer must:

(i) Keep fire response equipment in a state of readiness;

(ii) Standardize all fire hose coupling and connection threads throughout the facility and on vessels and vessel sections by providing the same type of hose coupling and connection threads for hoses of the same or similar diameter; and

(iii) Ensure that either all fire hoses and coupling connection threads are the same within a facility or vessel or vessel section as those used by the outside fire response organization, or supply suitable adapter couplings if such an organization is expected to use the fire

[1] In the final rule, OSHA will amend § 1915.5 to reflect the incorporation by reference of the NFPA standards referenced in this subpart.

response equipment within a facility or vessel or vessel section.

§ 1915.506 Hazards of fixed extinguishing systems on board vessels and vessel sections.

(a) *Employer responsibilities.* The employer must comply with the provisions of this section whenever employees are exposed to fixed extinguishing systems that could create a hazardous atmosphere when activated aboard vessels and vessel sections, regardless of geographic location.

(b) *Requirements for automatic and manual systems.* Before any work is done in a space equipped with fixed extinguishing systems:

(1) The employer must either physically isolate the systems or have other positive means to prevent the systems' discharge; or

(2) Ensure employees are trained to recognize systems discharge and evacuation alarms, and to recognize the appropriate escape routes;

(3) Protective measures must be taken to ensure that all doors, hatches, scuttles, and other exit openings remain working and accessible for escape in the event the systems are activated; and

(4) If systems activation could result in a positive pressure in the protected spaces, all inward opening doors, hatches, scuttles, and other potential barriers to safe exit must be removed, locked open, braced, or otherwise secured so that they remain open and accessible for escape; and

(5) Employees must be trained to recognize hazards associated with the extinguishing systems and agents including the dangers of disturbing system components and equipment such as, piping, cables, linkages, detection devices, activation devices, and alarm devices.

(c) *Additional Requirement for manual systems.* Before any work is done in a space equipped with fixed extinguishing systems that are activated only manually, the employer must ensure that during trials all pull stations and other activation stations, whether remote or local, must be secured either under lock and key or by posting an attendant, so that they cannot be accessed by unauthorized persons.

(d) *Testing the system.* The employer must make sure that the system is physically isolated and that all employees not directly involved in testing it are evacuated from the protected spaces and affected areas on board any vessel or vessel sections, before testing any fixed extinguishing system.

(e) *Conducting system maintenance.* Before conducting maintenance on a fixed extinguishing system the employer must make sure that the system is physically isolated.

(f) *Using fixed manual extinguishing systems for fire protection.* If fixed manual extinguishing systems are used to provide fire protection for protected spaces, the employer must ensure that:

(1) Employees are trained and designated to operate and activate the systems; and

(2) All employees are evacuated from the protected spaces and affected areas and accounted for, before the fixed manual extinguishing system is activated.

§ 1915.507 Land side fire protection systems.

(a) *Employer responsibilities.* All fixed and portable fire protection systems the employer installs to meet an OSHA standard for employee life safety or employee protection from fire hazards in land side facilities, including, but not limited to, buildings, structures, and equipment must meet the requirements of this section.

(b) *Portable fire extinguishers and hose systems.* (1) The employer must select, install, inspect, maintain, and test all portable fire extinguishers according to NFPA 10–2002, *Standard for Portable Extinguishers* (incorporated by reference in § 1915.5).

(2) The employer shall be permitted to use class II or class III hose systems, in accordance with NFPA 10–2002, as portable fire extinguishers if the employer selects, installs, inspects, maintains, and tests those systems according to the specific requirements in NFPA 14–2000, *Standard for the Installation of Standpipe and Hose Systems* (incorporated by reference in § 1915.5).

(c) *General requirements for fixed extinguishing systems.* The employer must:

(1) Ensure that any fixed extinguishing system component or extinguishing agent be approved by an OSHA Nationally Recognized Testing Laboratory (NRTL), meeting the requirements of 29 CFR 1910.7, for use on the specific hazards the employer expects it to control or extinguish;

(2) Notify employees and take the necessary precautions to make sure employees are safe from fire if for any reason a fire extinguishing system stops working, until the system is working again;

(3) Make sure that all repairs to fire extinguishing systems and equipment are done by a qualified technician or mechanic;

(4) When the atmosphere remains hazardous to employee safety or health, provide proper personal protective equipment when employees enter discharge areas or provide safeguards to prevent employees from entering those areas.

Note to paragraph (c)(4): *See* § 1915.12 for additional requirements applicable to safe entry into spaces containing dangerous atmospheres.

(5) Post hazard warning or caution signs at both the entrance to and inside of areas protected by fixed extinguishing systems that use extinguishing agents in concentrations known to be hazardous to employee safety or health; and

(6) Select, install, inspect, maintain, and test all automatic fire detection systems and emergency alarms according to NFPA 72–1999, *National Fire Alarm Code* (incorporated by reference in § 1915.5).

(d) *Fixed extinguishing systems.* The employer must select, install, maintain, inspect, and test all fixed systems required by OSHA as follows:

(1) Standpipe and hose systems according to NFPA 14–2000, *Standard for the Installation of Standpipe Systems* (incorporated by reference in § 1915.5);

(2) Automatic sprinkler systems according to NFPA 13–1999, *Standard for the Installation of Automatic Sprinkler Systems or* NFPA 750–2000, *Standard on Water Mist Extinguishing Systems,* and NFPA 25–2002 *Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems* (incorporated by reference in § 1915.5);

(3) Fixed extinguishing systems that use water or foam as the extinguishing agent according to NFPA 15–2001, *Standard for Water Spray Fixed Systems for Fire Protection,* NFPA 11–2000, *Standard for Low-Expansion Foam,* and NFPA 11A–1999, *Standard for Medium- and High-Expansion Foam Systems* (incorporated by reference in § 1915.5);

(4) Fixed extinguishing systems using dry chemical as the extinguishing agent, according to NFPA 17–1998, *Standard for Dry Chemical Extinguishing Systems* (incorporated by reference in § 1915.5); and

(5) Fixed extinguishing systems using gas as the extinguishing agent, according to NFPA 12–2000, *Standard on Carbon Dioxide Extinguishing Systems,* NFPA 12A–1997, *Standard on Halon 1301 Fire Extinguishing Systems,* and NFPA 2001–2000, *Standard on Clean Agent Fire Extinguishing Systems* (incorporated by reference in § 1915.5).

§ 1915.508 Training

(a) *Employee training.* The employer must train affected employees when

they first start working and also when necessary to maintain proficiency in the following:

(1) The general principles of using fire extinguishers or hose lines, the hazards involved with incipient firefighting, and the procedures used to reduce these hazards;

(2) The hazards associated with fixed and portable fire protection systems that employees may use or to which they may be exposed during discharge of those systems;

(3) The activation and operation of fixed and portable fire protection systems that the employer expects employees to use in the workplace;

(4) The emergency alarm signals including system discharge and employee evacuation alarms; and

(5) The primary and secondary evacuation routes that employees must use in the event of a fire in the workplace.

Note to paragraph (a)(5): While all vessels and vessel sections have a primary evacuation route, not all will have a secondary evacuation route.

(b) *Training requirements for shipyard employees designated for fire response.* The employer must:

(1) Have a written training policy stating that fire response employees are to be trained and capable of carrying out their duties and responsibilities at all times;

(2) Keep written standard operating procedures that address anticipated emergency operations and update these procedures as necessary;

(3) Review fire response employee training programs and hands-on sessions before they are used in fire response training to make sure that fire response employees are protected from hazards associated with fire response training;

(4) Provide training for fire response employees that ensures they are capable of carrying out their duties and responsibilities under the employer's standard operating procedures;

(5) Train new fire response employees before they engage in emergency operations;

(6) At least quarterly, provide training on the written operating procedures to fire response employees who are expected to fight fires;

(7) Use qualified instructors to conduct the training;

(8) Conduct any training that involves live fire response exercises in accordance with NFPA 1403–2002, *Standard on Live Fire Training Evolutions* (incorporated by reference in § 1915.5) (Ex. 19–24);

(9) Conduct semi-annual drills for fire response employees that cover site-specific operations, occupancies, buildings, vessels and vessel sections, and hazards according to the employer's written procedures; and

(10) Not use smoke generating devices that create a hazardous atmosphere in training exercises.

(c) *Training requirements for fire watch duty.* (1) The employer must ensure that each fire watch is trained as follows:

(i) Before being assigned to fire watch duty;

(ii) Whenever there is a change in operations that presents a new or different hazard;

(iii) Whenever the employer has reason to believe that the fire watch's knowledge or understanding of the training previously provided is inadequate; and

(iv) Receives annual retraining.

(2) The employer must ensure that each employee who stands fire watch duty is trained in:

(i) The basics of fire behavior, the different classes of fire and of extinguishing agents, the stages of fire, and methods for extinguishing fires;

(ii) Extinguishing live fire scenarios whenever allowed by local and federal law;

(iii) The recognition of the adverse health effects that may be caused by exposure to fire;

(iv) The physical characteristics of the hot work area;

(v) The hazards associated with fire watch duties;

(vi) The personal protective equipment (PPE) needed to perform fire watch duties safely;

(vii) How to use the PPE;

(viii) How to select and use any fire extinguishers and fire hoses likely to be used by a fire watch in the work area;

(ix) The location and use of barriers;

(x) The means of communication designated by the employer for fire watches;

(xi) When and how to start fire alarm procedures; and

(xii) The employer's evacuation plan.

(3) The employer must ensure that each fire watch is trained to alert others to exit the space whenever:

(i) The fire watch perceives an unsafe condition;

(ii) The fire watch perceives that a worker performing hot work is in danger;

(iii) The employer or a representative of the employer orders an evacuation; or

(iv) An evacuation signal, such as an alarm, is activated.

(d) *Records.* The employer must keep records that demonstrate that employees have been trained as required by paragraphs (a), (b), and (c) of this section.

(1) The records must include:

(i) The employee's name;

(ii) The trainer's name;

(iii) The type of training; and

(iv) The date(s) on which the training took place.

(2) The employer must keep each training record for one year from the time it was made or until it is replaced with a new training record, whichever is shorter, and make it available for inspection and copying by OSHA personnel on request.

§ 1915.509 Definitions applicable to this subpart.

Affected employee—an employee whose job requires him or her to perform hot work or to work in an area or space exposed to hazards associated with the hot work that is being performed.

Alarm—a signal or message from a person or device that indicates that there is a fire, medical emergency, or other situation that requires emergency response or evacuation. This may be called an ''incident'' or a ''call for service.''

Alarm system—a system that warns all employees at the worksite of danger.

Body harness—straps that may be secured about the employee in a manner that will distribute the fall arrest forces over at least the thighs, shoulders, chest, and pelvis, with means for attaching it to other components of a personal fall arrest system.

Contract employer—an employer, such as a painter, joiner, carpenter, or scaffolding sub-contractor, who performs work under contract to the host employer or to another employer under contract to the host employer at the host employer's worksite. Excludes employers who provide incidental services that do not influence shipyard employment (such as mail delivery or office supply services).

Dangerous atmosphere—an atmosphere that may expose employees to the risk of death, incapacitation, injury, acute illness, or impairment of ability to self-rescue (*i.e.*, escape unaided from a confined or enclosed space).

Designated area—an area established for hot work after an assessment of fire hazard potential of facilities, vessels, or vessel sections such as a fabrication shop.

Emergency operations—activities performed by a fire response organization that are related to:

(1) Rescue;

(2) Fire suppression;

(3) Emergency medical care; and

(4) Special operations such as hazardous materials response

(HAZMAT), HAZMAT release mitigation, standby for flight operations where needed, protection of structures exposed to nearby, off-site fires, mutual-aid at other workplaces, *etc.* These activities include responding to the scene of an incident, and all activities performed at that scene.

Fire hazard—a condition or material that may start or contribute to the spread of fire.

Fire protection—methods of providing fire prevention, response, detection, control, extinguishment, and engineering.

Fire response—the activity taken by the employer at the time of an emergency incident involving a fire at the worksite, including fire suppression activities carried out by internal or external resources or a combination of both, or total or partial employee evacuation of the area exposed to the fire.

Fire response employee—a shipyard employee who performs shipyard employment firefighting.

Fire response organization—an organized group knowledgeable, trained, and skilled in shipyard firefighting operations who respond to shipyard fire emergencies, including:

(1) Fire brigades;

(2) Shipyard fire departments;

(3) Private or contractual fire departments; and

(4) Municipal fire departments.

Fire suppression—the activities involved in controlling and extinguishing fires. Fire suppression includes all activities performed at the scene of a fire incident or training exercise that expose fire response employees to the following dangers:

(1) Heat;

(2) Flame;

(3) Smoke;

(4) Other products of combustion;

(5) Explosion;

(6) Structural collapse; or

(7) Hazardous materials.

Fire watch—the activity of observing and responding to the fire hazards associated with hot work in shipyard employment, and the employees designated to do so.

Fixed extinguishing system—a permanently installed fire protection system that either extinguishes or controls fire occurring in the space it protects.

Flammable liquid—any liquid having a flashpoint below 100°F. (37.8°C.), except any mixture having components with flashpoints of 100°F. (37.8°C.) or higher, the total of which make up 99 percent or more of the total volume of the mixture.

Hazardous atmosphere—an atmosphere that may expose employees to the risk of death, incapacitation, injury, acute illness, or impairment of ability to self-rescue (that is, escape unaided from a permit space), from one or more of the following causes:

(1) Flammable gas, vapor, or mist in excess of 10 percent of its lower flammable limit (LFL);

(2) Airborne combustible dust at a concentration that meets or exceeds its LFL;

(3) Atmospheric oxygen concentration below 19.5 percent or above 22.5 percent;

(4) Atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in 29 CFR 1910, subpart G, *Occupational Health and Environmental Control*, or in 29 CFR 1915, subpart Z, *Toxic and Hazardous Substances* of this part, and that could result in employee exposure in excess of its dose or permissible exposure limit;

(5) Any other atmospheric condition that is immediately dangerous to life or health (IDLH). *Hazardous substance*—a substance likely to cause injury by reason of being explosive, flammable, poisonous, corrosive, oxidizing, an irritant, or otherwise harmful.

Hose systems—fire protection systems consisting of a water supply, approved fire hose, and a means to control the flow of water at the output end of the hose.

Host employer—an employer who is in charge of coordinating work or hiring other employers to perform work at a multi-employer workplace.

Hot work—any activity involving riveting, welding, burning, using explosive actuated power tools, or similar fire-producing operations. Grinding, drilling, abrasive blasting, or similar spark-producing operations also are considered hot work, except when these operations are physically removed from any atmosphere containing more than 10 percent of the lower explosive limit of a flammable or combustible substance.

Incident management system—an organized system of roles, responsibilities, and standard operating procedures used to manage emergency operations. Such systems are often called ''Incident Command Systems'' (ICS).

Inerting—the displacement of the atmosphere in a permit space by noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible. This procedure produces an IDLH oxygen-deficient atmosphere.

Interior Structural Firefighting Operations—the physical activity of fire response, rescue, or both, inside of buildings, enclosed structures, vessels, and vessel sections that are involved in a fire beyond the incipient stage.

Multi-employer workplace—a workplace where there is a host employer and at least one contract employer.

Personal Alert Safety System (PASS)—a device that sounds a loud signal if the wearer becomes immobilized or is motionless for 30 seconds or more.

Physical isolation—the elimination of a fire hazard by removing the hazard from the work area (at least 35 feet for combustibles), by covering or shielding the hazard with a fire-resistant material, or physically preventing the hazard from entering the work area.

Physically isolated—positive isolation of the supply from the distribution piping of a fixed extinguishing system. Examples of ways of physically isolating include: Removing a spool piece and installing a blank flange; providing a double block and bleed valve system; or completely disconnecting valves and piping from all cylinders or other pressure vessels containing extinguishing agents.

Protected space—any compartment where a fixed extinguishing system discharges.

Proximity firefighting—specialized fire-fighting operations that require specialized thermal protection and may include the activities of rescue, fire suppression, and property conservation at incidents involving fires producing very high levels of conductive, convective, and radiant heat such as aircraft fires, bulk flammable gas fires, and bulk flammable liquid fires. Proximity firefighting operations usually are exterior operations but may be combined with structural firefighting operations. Proximity firefighting is not entry firefighting.

Qualified instructor—a person with specific knowledge, training, and experience in fire response organizations, operations, and deployment.

Rescue—locating endangered persons at an emergency incident, removing those persons from danger, treating the injured, and transporting the injured to an appropriate health care facility.

Shipyard employment—ship repairing, shipbuilding, shipbreaking, and related employments, including vessels, vessel sections, and on land-side operations regardless of geographic location.

Shipyard firefighting—the activity of rescue, fire suppression, and property conservation involving buildings, enclosed structures, vehicles, vessels, aircraft, or similar properties involved

in a fire or emergency situation. Shipyard firefighting includes any fire that requires a fire attack hose line of 1-½ inch diameter or larger to fight, and self-contained breathing apparatus by responders.

Standpipe—a fixed fire protection system consisting of piping and hose connections used to supply water to approved hose lines or sprinkler systems. The hose may or may not be connected to the system.

Appendix A to Subpart P—Model Fire Safety Plan

Model Fire Safety Plan

Table of Contents

I. Purpose.
II. Work site fire hazards and how to properly control them.
III. The preferred way to report fires and other emergencies.
IV. How to evacuate in different emergency situations.
V. Rescue and medical duties for those employees who perform them.
VI. Employee awareness.

I. Purpose

The purpose of this fire safety plan is to inform our employees of how we will control and reduce the possibility of fire in the workplace and to specify what equipment employees may use in case of fire.

II. Work Site Fire Hazards and How To Properly Control Them

A. Measures to contain fires.

B. Teaching selected employees how to use fire protection equipment.

C. What to do if you discover a fire.

D. Potential ignition sources for fires and how to control them.

E. Types of fire protection equipment and systems that can control a fire.

F. The level of firefighting capability present in the facility.

G. Description of the personnel responsible for maintaining equipment, alarms and systems that are installed to prevent or control fire ignition sources, and to control fuel source hazards.

III. The Preferred Way To Report Fires and Other Emergencies

A. A demonstration of alarm procedures, if more than one type exists.

B. The work site emergency alarm system.

C. Immediately notifying fire or police departments.

IV. How To Evacuate in Different Emergency Situations

A. Emergency escape procedures and route assignments.

B. Procedures to account for all employees after completing an emergency evacuation.

C. What type of evacuation is needed and what the employee's role is in carrying out the plan.

D. How to identify and recognize fire exits.

E. Helping physically impaired employees.

V. Rescue and Medical Duties for Those Employees Who Perform Them

A. Regular and after-hours work conditions.

VI. Employee Awareness

Names, job titles, or departments of individuals who can be contacted for further information about this plan.

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Federal Register

Wednesday,
December 11, 2002

Part III

Department of Justice

Immigration and Naturalization Service

8 CFR Parts 103, 214, 248 and 274a
Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS); Final Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, 248 and 274a

[INS No. 2185–02]

RIN 1115–AF55

Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations governing the retention and reporting of information regarding F, J, and M nonimmigrants (foreign nationals having a residence in a foreign country which they have no intention of abandoning, and who are seeking temporary admission to the United States). This rule also implements the Student and Exchange Visitor Information System (SEVIS), establishes a process for electronic reporting by designated school officials (DSO) of information required to be reported to the Service, and provides clear standards governing the maintenance, extension and reinstatement of student status. This rule is necessary to improve and streamline the reporting and recordkeeping of F, J, and M nonimmigrants.

DATES: This final rule is effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Maura Deadrick, Assistant Director, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3040, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

Background

Who Are F, J, and M Nonimmigrants?

The Immigration and Nationality Act (Act) provides for the admission of various classes of nonimmigrants, including F, J, and M nonimmigrants, who are foreign nationals having a residence in a foreign country which they have no intention of abandoning, and who are seeking temporary admission to the United States. The purpose of the nonimmigrant's intended stay in the United States determines his or her proper nonimmigrant classification.

F–1 nonimmigrants, as defined in section 101(a)(15)(F) of the Act, are foreign students pursuing a full course of study in Service-approved colleges, universities, seminaries, conservatories, academic high schools, private elementary schools, other academic institutions, and in language training programs in the United States. For the purposes of this rule, the term ''school'' refers to all of these types of Service-approved institutions. An F–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an F–1 nonimmigrant. J–1 nonimmigrants, as defined in section 101(a)(15)(J) of the Act, are foreign nationals who have been selected by a sponsor designated by the United States Department of State (formerly the United States Information Agency (USIA) to participate in an exchange visitor program in the United States. The J–1 classification includes aliens who are participating in programs under which they will receive graduate medical education or training. A J–2 nonimmigrant is a foreign national who is the spouse or qualifying child of a J–1 exchange visitor.

M–1 nonimmigrants, as defined in section 101(a)(15)(M) of the Act, are foreign nationals pursuing a full course of study at a Service-approved vocational or other recognized nonacademic institution (other than in language training programs) in the United States. The term ''school'' also encompasses those institutions attended by M–1 students for the purposes of this final rule. An M–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an M–1 student.

Congress recently amended the Act to create new F–3 and M–3 nonimmigrant classifications for certain aliens who are citizens of Canada or Mexico who continue to reside in their home country while commuting to the United States to attend an approved F or M school. Public Law 107–274 (Nov. 2, 2002). Such border commuter students are not subject to the existing requirement for F–1 and M–1 students to be pursuing a full course of study, and are specifically permitted to engage in either full-time or part-time studies. However, F–3 and M–3 border commuter students will not be eligible to obtain F–2 or M–2 status for their dependents. The Service recently adopted regulations relating to border commuter students, 67 FR 54941 (August 27, 2002) (codified at 8 CFR 214.2(f)(18) and (m)(19)), and will be amending those regulations in the future to make the necessary conforming amendments in response to the recent legislation. In this rule, the Service merely notes that, except for a reduction in course load, the new F–3 and M–3 students will be subject to the same reporting requirements and SEVIS processes as for F–1 and M–1 students.

The Service wishes to clarify that compliance with SEVIS reporting requirements does not exempt F, M or J nonimmigrants from requirements or restrictions associated with other applicable statutes and regulations. Nonimmigrant students or exchange visitors subject to such regulations or statutes may be required to seek government approval, and may be denied such approval, for initial enrollment in a program and for actions that a school or program official may otherwise authorize for a nonimmigrant in SEVIS, such as transfers, extensions and changes to course of study. For example, among the kinds of schools approved for attendance by M nonimmigrants are flight training schools. The Service notes that section 113 of the Aviation and Transportation Security Act, Public Law 107–71 (Nov. 19, 2001), imposes new restrictions on providing flight training to aliens and requires prior notification to the Attorney General before such training can begin. The requirements of that law are separate from, and in addition to, the law and regulations governing F, M and J nonimmigrants. The Department of Justice has already published public notices and regulations pertaining to section 113 at 67 FR 2238 (Jan. 16, 2002), 67 FR 6051 (Feb. 8, 2002), 67 FR 41140 (June 14, 2002), and 67 FR 41147 (June 14, 2002). As another example, Title II of the Public Health Security and Bioterrorism Preparedness and Response Act, Public Law 107–188 (June 12, 2002), imposes restrictions on access to dangerous select bio-agents and toxins.

Response to Public Comments on the Proposed Rule

On May 16, 2002, the Service published a proposed rule in the **Federal Register** at 64 FR 34862, to implement the electronic collection and reporting process mandated under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 8 U.S.C. 1372. Specifically, the regulation sought to improve the collection of information on nonimmigrant students by establishing real time updates of student information. The proposed rule also amended the current regulations to establish additional reporting requirements based upon the USA PATRIOT Act (Public Law 107–56) and section 501 of the Enhanced Border Security Act (Public Law 107–173). Comments were due to the Service on or before June 17, 2002.

The following discussion will address only those provisions about which comments were received. Many commenters addressed identical issues in their comments, and as a result, the number of comments exceeds the number of issues discussed. In general, commenters expressed their overall support for SEVIS and the improvements to be made by electronic reporting as well as stressing the importance of foreign students on the economy and culture of the United States.

I. Mandatory Compliance Date

The majority of comments opposed the January 30, 2003, mandatory compliance date. Most commenters suggested that the compliance date be established by the Service in a separate rulemaking after SEVIS becomes fully operational. Other commenters suggested that the compliance deadline be moved 9 to 12 months after the release of SEVIS.

The reason most often given by commenters for their belief that the January 30, 2003 date was not feasible for schools was the technological changes required for compliance. Commenters indicated that they have not had sufficient time to assess the system changes necessary to implement SEVIS at their school and expressed concern over the short time frame to change existing business processes to meet the new SEVIS requirements. Commenters stated that to bring schools into compliance requires time and scarce resources to purchase software and training from third party vendors. Several commenters stated that being forced to comply prematurely would result in an investment in technology that becomes obsolete once SEVIS is fully operational. These commenters also indicated that SEVIS should be placed into full operation only after the technology had been developed and tested and the Service was confident the system would work.

Further, many commenters indicated that they did not want to allocate significant investments toward the real time interactive portion of SEVIS and would instead choose to wait for the batch reporting capability. As the batch process will not be available until later in 2002, commenters stated they need time to install and test the software interface with SEVIS to determine any incompatibility and that such installation and testing would necessitate an implementation date after January 30, 2003. Commenters indicated that their schools must weigh using an outside vendor against the creation of a unique system within the school to comply with SEVIS. The commenters argued that the deliberation necessary to determine which path to follow would take time, especially when the schools need authse authorization from the president or board of directors once all options have been weighed. Many commenters point out that there was no vendor software then available that meets the SEVIS requirements, although some vendors were in the final stages of development. The commenters stated that the absence of final specifications for batch processing had hampered the schools' efforts to begin implementation. Those institutions that do not purchase a product available in the market and who instead choose to build their own batch system may take even more time. One commenter estimated that it would take 4,000–5,000 hours of information technology (IT) effort to develop the school's system. The fact that international student and scholar data is located in various university offices within one school was another reason cited by commenters as a reason that it would take schools beyond January 30, 2003, to implement new systems and processes to comply with SEVIS.

Many commenters cited cost as another prohibitive factor in being able to be ready in time for the mandatory compliance date. The Service was given monetary figures ranging from $15,000 to $500,000 as the cost per school to implement SEVIS. These costs include paying contract programming rates, buying servers, software licenses, and software from a vendor, receiving training in new XML technology, and additional positions for staff.

Finally, commenters stated that January 30, 2003, is not reasonable in light of the fact that the Department of State (DOS) has not yet published corresponding regulations with the new SEVIS requirements for program sponsors with the new SEVIS requirements. Commenters discussed the need for the Service regulations and the DOS regulations to be consistent in order to reduce the burden on schools. Several commenters expressed concern over the fact that the Service and the DOS were publishing separate rules and felt that they will be forced to duplicate efforts if the rules are not consistent.

While the Service is aware of the concerns that the education community has in meeting the January 30, 2003 compliance date, the Service believes the date can be met at little to no cost to the schools. Other than personnel costs for data entry, there is virtually no cost to schools as real time interactive capability only requires that the school have Internet access and a free browser. There is no other software necessary to use the real time interactive capability and there are no recurring access fees. Additionally, as will be discussed in the following section, January 30, 2003, is the date by which all schools must use SEVIS in order to issue a new Form I–20. Although schools may choose to do so, the Service does not intend January 30, 2003 to be the date by which schools must enter all students into SEVIS. Moreover, a Form I–20 issued prior to January 30, 2003, will be accepted for visa issuance, admission, or change of status prior to August 1, 2003.

The Service has been working under several statutory mandates for the implementation of SEVIS and must balance national security concerns against the concerns of the education community. The Service has been working within the tight timeframes required by statutory mandate since the inception of the Coordinated Interagency Partnership Regulating International Students (CIPRIS) pilot program in 1997. In 2001 Congress passed two separate laws to strengthen national security that focused directly on the Service's foreign student program. In addition, the Service has been involved with working groups on student issues as directed by the President in Presidential Directive Number 2. These working groups, led by the Office of Science and Technology Policy (OSTP) and Office of Homeland Security (OHS), included representatives from the National Institute of Standards and Technology (NIST), National Science Foundation (NSF), National Institute of Health (NIH), and other federal agencies. Several open meetings hosted by National Academy of Science (NAS) included representatives from NAFSA-Association of International Educators, American Council on Education (ACE), and universities such as MIT and UCLA. The January 30, 2003 compliance date evolved from the security concerns of Congress and the Administration. It was not a date chosen at random, but was a date chosen as the most reasonable balance between national security concerns and the education community's ability to comply. The sooner that all schools and students are in the SEVIS database, the sooner the Service will have the ability to more fully monitor them.

Furthermore, the Service and the DOS have been working collaboratively since the inception of SEVIS to ensure that similar requirements were being proposed in areas as appropriate. From the beginning of the CIPRIS pilot program, the DOS has committed a full-time staff person to SEVIS to develop

the SEVIS requirements with the Service and to incorporate such requirements in the DOS regulations. On numerous occasions both agencies have come together to discuss SEVIS requirements with the education community. The fact that two separate rules are being promulgated setting out SEVIS requirements is a matter of the federal rulemaking process, and does not indicate that the two agencies are not working together.

Although the Attorney General has the primary responsibility for implementing SEVIS, the DOS must promulgate a rule setting forth SEVIS requirements that specifically pertain to J–1 program sponsors. Furthermore, in areas where the Service has responsibility over J–1 nonimmigrants (*e.g.*, admission and duration of status), the Service has addressed those areas in this rule. The DOS has addressed in their separate rule those areas in which the Service does not have responsibility over the J–1 exchange visitor (*e.g.*, eligibility for employment, change of category, transfer, or reinstatement). For more information on SEVIS as it relates to DOS authority over program sponsors and J exchange visitors, see the DOS rule. By the time the SEVIS mandatory compliance date is reached, the batch SEVIS technical requirements will have been available for approximately 18 months. It was the intent of the Service to provide schools and programs access to such technical requirements as early as possible in order to assist in the transition to SEVIS especially under the narrow timeframe as mandated by Congress. The Service began notification and publication of the batch technical specifications of the F, M and J data requirements in August 2001. The Service also published an announcement in the Commerce Business Daily and sponsored multiple vendor conferences specifically to release the SEVIS technical specifications for batch-interface. Nine vendor conferences were held on the east and west coasts during the months of August and September 2001. The technical specifications for the Service and the DOS were posted on the Internet at that time and were subsequently updated with a revised draft version on November 21, 2001. In response to a number of requests from the education community, the Service sponsored an additional technical conference in the Washington, DC metropolitan area on June 13, 2002, to continue to discuss XML technical specifications and to begin release of a finalized version of the Interface Control Document. The final Interface Control Document was published on the Service's Web site on August 14, 2002.

Finally, while the Service understands the time and monetary concerns expressed by those schools interested in utilizing the batch capability of SEVIS, the Service notes that the real time interactive capability of SEVIS remains available to such schools. The use of batch processing is a choice to be made voluntarily by each individual school. Therefore, the fact that a school may not be technologically or financially ready to use batch processing does not mean that the school is not able to comply with the new SEVIS reporting requirements and processes on January 30, 2003, by utilizing the real time interactive capability of SEVIS. The real time interactive portion of SEVIS is currently available to enrolled schools. The additional benefit to schools using real time interactive capability is that these schools may begin use of SEVIS through real time interactive now and enter students on a phased-in basis. By doing so, the school would essentially have all students already entered in SEVIS and could then switch over to batch processing at the first registration after the mandatory compliance date. By entering these students over time, schools will be able to gain system familiarity and requirement familiarity while still meeting the mandatory date.

II. Form I–20, Certificate of Eligibility for Nonimmigrant (F–1)/(M–1) Student Status—For Academic and Language Students/Vocational Students

Many comments were received regarding the SEVIS Form I–20. The majority of commenters requested that the Service clarify the responsibilities of those schools that begin using SEVIS prior to the mandatory compliance date. Commenters urged the Service to allow schools sufficient time to enter all current students in SEVIS and suggested several alternative dates by which all current students should be entered in SEVIS.

While the proposed rule indicated that all schools were required to report the registration of all current students by the next academic term after mandatory compliance, the Service believes the final rule should impose one date upon all schools by which all current students must be entered in SEVIS. The Service agrees with the commenters that many schools with large student populations would be forced to input all current students in SEVIS in a very short time frame in order to meet the terms of the proposed rule. In response to the commenters and the Service's desire to allow schools sufficient time to ensure that the information entered in SEVIS is accurate, the Service believes that a specific date is an equitable solution that leads to less confusion among schools as to when all of their current students must be entered into SEVIS. As such, the Service has determined August 1, 2003, to be the date upon which all current or continuing students must be entered into SEVIS.

To clarify, schools that begin using SEVIS prior to the mandatory compliance date must issue a SEVIS Form I–20 to any new student. Additionally, these schools must issue a SEVIS Form I–20 to any current student requiring a new Form I–20 because of a reportable action (*e.g.*, extension of status, practical training, or employment authorization, or for a new F–1, F–3, M–1, M–3 nonimmigrant visa). A current student with a previously issued non-SEVIS Form I–20 and a current nonimmigrant F or M visa will not be required to obtain a SEVIS Form I–20 for travel purposes and may use his or her current non-SEVIS Form I–20 with proper annotation for reentry until the date that all students must be entered in SEVIS. In order to comport with the required update events of § 214.2(f) and § 214.2(m) and the reporting requirements of § 214.3, including registration, schools need only update SEVIS as to those students whose information has been entered into SEVIS. These schools are not required to enter any of their current students into SEVIS or report on these students in SEVIS prior to the mandatory compliance date except for those current students who need a new Form I–20 for a reportable action or other reason.

After the mandatory compliance date is reached, schools must issue SEVIS Forms I–20 to all new students and all provisions and processes related to non-SEVIS schools will become void. At that time, schools must issue SEVIS Forms I–20 to current students requiring a reportable event. For students whose records have not been entered into SEVIS, schools are still required to comply with the recordkeeping and reporting requirements contained in section 214.3(g)(1) and (2). Lastly, schools must enter the record of all F or M students that are currently enrolled as of August 1, 2003, in SEVIS and report the enrollment for such nonimmigrants by August 1, 2003.

On a related topic, many commenters requested that the Service continue to accept, for a reasonable period of time, Forms I–20A-B, Certificate of Eligibility For Nonimmigrant (F–1) Student Status, For Academic and Language Students,

Forms I–20M-N, Certificate of Eligibility for Nonimmigrant (M–1) Student Status, For Vocational Students, and Form DS–2019, Certificate of Eligibility for Exchange Visitor (J–1) Status, that were issued prior to the mandatory compliance date. In response to this request, the Service has added provisions in § 214.2(f), (j) and (m) of this rule to allow F, J, and M nonimmigrants who were issued such documents prior to the mandatory SEVIS compliance date, to continue to be admitted to the United States using these documents for a limited period of time. As of August 1, 2003, however, all non-SEVIS Forms I–20 and DS–2019 will no longer be acceptable, and F, J, and M nonimmigrants must be in possession of a SEVIS Form I–20 or DS–2019.

Additionally, commenters stated that the proposed rule did not address the process by which the dependents of F–1 or M–1 students are to be issued the SEVIS Form I–20. The Service notes that section IV of the supplementary information in the proposed rule contains a discussion of this process. However, the Service agrees that the process as described in the proposed rule should be codified in the pertinent provisions of § 214.2 (f) and (m) and § 214.3(k).

Additionally, prior to August 1, 2003, if exigent circumstances can be demonstrated, the Service will allow the dependents of F–1, J–1, and M–1 nonimmigrants in possession of a SEVIS document to enter with a copy of the principal's SEVIS document.

The Service notes that passage of the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173 (Border Security Act), necessitates changes to the disposition of the SEVIS Form I–20 at ports-of-entry. The Border Security Act requires the Service to notify approved schools and exchange programs that the F or M nonimmigrant has been admitted to the United States. By on, or about January 1, 2003, the Service anticipates that it will accomplish this notification to schools electronically through SEVIS.

However, for a short period of time, the Service will accomplish this notification to schools and exchange programs using a paper process. Upon the initial admission of the F or M student, the inspector at a port-of-entry will take the SEVIS Form I–20 from the student. The SEVIS Form I–20 will be returned to the school within approximately 10 days of the student's arrival. The school will be responsible for returning the SEVIS Form I–20 to the student or notifying the Service that the student has failed to register. In the case of a non-SEVIS Form I–20, the student's copy and the school's copy will be appropriately annotated with the admission information. The student's copy will be returned to the student at the port-of-entry and the school copy will be forwarded to the Service's data processing center to be forwarded to the school listed on the Form I–20.

In the case of a SEVIS Form DS–2019, SEVIS will generate an original SEVIS Form DS–2019 and a watermark version of the Form DS–2019. Upon the initial admission of the J–1 exchange visitor, the inspector at the port-of-entry will properly annotate both the original SEVIS Form DS–2019 and the watermark draft copy. The inspector will return the original SEVIS Form DS–2019 to the exchange visitor and the watermark version will be forwarded by the inspector to the Service's data processing center. The watermark version will be returned to the program sponsor within approximately 10 days of the exchange visitor's arrival. The program sponsor will be responsible for notifying the Service and DOS that the exchange visitor has failed to commence program participation by updating the record in SEVIS within 30 days of the program commencement date. Upon the initial admission of a J–1 nonimmigrant, the Service will continue to process the non-SEVIS Form DS–2019 as it has done in the past.

While this paper-based process remains in effect, the Service's data processing center will attach a cover letter to all Forms I–20 and SEVIS Forms I–20 forwarded to schools, indicating that the student has entered the United States using the school's form. Such notification by the Service allows schools to be able to comply with the requirement that they report to the Service any students who fail to register. SEVIS schools must report such ''no shows'' in SEVIS. Non-SEVIS schools are required to report these ''no shows'' through the Service's National Customer Service Center at 1–800–892–4829. In accordance with the DOS regulations, program sponsors are also required to report in SEVIS if an exchange visitor has failed to commence participation in his or her program. A ''no-show'' is a student or exchange visitor who has been issued a Form I–20 or Form DS–2019 by an approved school or designated program, and has been admitted to the United States, but who fails to register at his or her school or commence participation in his or her program within 30 days of the institution's registration deadline. Comments were also received requesting the Service to clarify whether changes could be made in SEVIS to a student's Form I–20 information prior to the student's registration at the school. Although this is not specifically addressed in the regulations, the DSO may update all Form I–20 information in SEVIS prior to registration, with the exception of major for a student with M nonimmigrant status who is not authorized to change educational objective.

However, once the Service fully implements a data share with the Department of State's consular systems, the DSO will no longer be permitted to update biographic information after visa issuance until after the school has indicated the student has registered. Additionally, after a student has entered the country, the DSO will no longer be permitted to change a student's program start date. Schools will be permitted, however, to update SEVIS to indicate that a Form I–20 has been terminated at any time.

III. Roles and Responsibilities of School Officials

The Service received many comments on the creation of the two new categories of designated school official, the principal designated school official (PDSO) and the administrative school official (ASO). While some commenters expressed the opinion that the creation of the ASO was helpful, others indicated that the three-tiered proposal imposes another layer of personnel, thereby limiting accountability. Several commenters were also opposed to the requirement that PDSOs and DSOs be United States citizens or lawful permanent residents. A primary source of concern for the majority of these commenters was the limitation on the number of DSOs per school or campus, citing the need for more personnel resources to input data in SEVIS. Commenters viewed the Service's limitation as arbitrary and suggested that schools should be left to determine the number of DSOs necessary to carry out their responsibilities. Others suggested that the number of DSOs be based upon the number of F–1, M–1, and J–1 nonimmigrants at a particular school.

The primary purpose of SEVIS is to provide access to current, accurate information to schools and the Service on all F, J, and M nonimmigrants. The information maintained in the system is only as reliable as those who are entering it. The Service's ability to control access is a customary and critical means of ensuring the integrity of the system. In order to maintain the integrity of the data in SEVIS, the Service has determined, in accordance with applicable Department of Justice

policies governing access to Departmental systems, that PDSOs and DSOs must be either a citizen or lawful permanent resident of the United States.

In response to the comments received, the Service will not adopt the three-tiered category PDSO, DSO and ASO as proposed. The Service finds merit in the commenters' arguments that this is an unnecessary layer that would not improve accountability. As such, once the necessary programming changes have been made to SEVIS, the Service will remove the ASO category. The category of PDSO will remain.

The Service will maintain numeric limits on the number of DSOs per school or campus in order to control access to SEVIS. Under this rule, each school or campus will be allotted one position for the PDSO and up to nine positions for DSOs. However, the Service does find merit in the comments suggesting that the number of DSOs be proportional to the number of nonimmigrant students. Once SEVIS is fully operational and schools have entered all current students in the system, the Service may reconsider the numerical limits on the number of DSOs.

On a related issue, in response to the Service's request, many comments discussed the feasibility of a DSO certification program. A certification process for DSOs was supported by most commenters as a way to strengthen the reliability of the data retained in SEVIS. However, several commenters urged the Service to hold off on establishing a certification program until after SEVIS was fully implemented in order to enable DSOs to focus fully on adjustment to SEVIS. Other commenters stated they did not want the Service to institute another mandatory program and that the Service should leave such training up to schools on a voluntary basis. The Service appreciates the responses received and will review and consider all comments again before making a decision whether to establish a DSO certification program. If a certification program is pursued, the Service may revisit the DSO limitations based on immigration status once such a certification process (including background checks) is in place.

One commenter suggested that the Service make clear that institutions have a right to seek legal counsel in establishing appropriate SEVIS compliance systems. The commenter contended that the Service's use of the PDSO as the point of contact for SEVIS serves to contravene the Agency Practice Act, 5 U.S.C. 500(b). The Service has no intention of denying a school's right to be represented by legal counsel. In fact, for many years there have been institutions that have designated a legal advisor as a designated school official. This rule does not prohibit a school from choosing to place counsel in the PDSO or DSO position or from conferring with counsel regarding the implementation of SEVIS requirements.

IV. Reduction in a Student's Course Load

Many comments were submitted regarding the proposed rule's treatment of a reduction in a student's course load. Some commenters suggested that the Service remove the word ''prior'' in the sentence, ''A student who drops below a full course of study without the prior approval of the DSO will be considered out of status.'' Additionally, commenters asserted that the Service should not consider a student to be out of status due to a reduced course load until the end of the semester or until the DSO is notified.

The Service cannot adopt these suggestions. With the implementation of SEVIS, the Service expects to have accurate, real time, information on all students. To allow a student to act, without first receiving approval from the DSO, undermines the most basic concept of SEVIS. As it is the responsibility of the student to maintain a full course of study in order to remain in compliance with his or her nonimmigrant status, it is reasonable to expect a student to understand this responsibility. Accordingly, the student should consult with, and receive the necessary permission from the designated school official prior to performing an act that affects status.

The Service understands that there may be situations in which a student is unable to maintain a full course load and has made allowances for such situations, provided the student receives permission first. The Service also understands there may be some situations in which a student's incapacitation may render it impossible for the student to request permission from the DSO prior to reducing his or her course load (*e.g.*, a student who is hospitalized for an extended period of time as the result of an accident). In such cases, the student will not be considered out of status.

Many commenters stated that the Service did not clearly indicate in the proposed rule whether DSOs could authorize a nonimmigrant student to drop below a full course of study more than once during his or her course of study. To clarify, during the course of study within one program level, an F–1 nonimmigrant can only be authorized on one occasion to reduce his or her course load due to academic difficulties, and must resume a full course at the start of the next available term or session, excluding a summer session. An F–1 student taking a reduced course load for academic reasons must still be taking at least one class or half the clock hours required for a full course of study. A DSO may not authorize an M–1 student to reduce his or her course load based on academic difficulties.

Commenters also argued that the Service's requirement allowing an F–1 student to drop below a full course of study only where he or she faces ''initial'' difficulties should be expanded to include other legitimate reasons as determined by the DSO. The Service does not adopt this suggestion to permit the DSO to make a determination based on personal or academic reasons. Such a determination is extremely vague and is open to abuse.

Several commenters also suggest that the Service allow a DSO to authorize a reduced course load if students are unprepared or in jeopardy of failing a course. The Service notes that the current regulations already provide for this situation. For example, a student may be authorized to drop below full time study due to improper course level placement.

In the case of an illness or medical condition, an F–1 student may be authorized to reduce course load for a period not to exceed 12 months in aggregate. The DSO may also authorize a student to refrain from taking any courses due to medical condition or illness if the severity of the condition warrants such authorization. Although a student may be authorized for up to 12 total months of a reduced course load in this case, a school official must re-authorize the reduction each term or session, and must update this authorization in SEVIS. The 12 month limit on authorization to reduce course load for illness or medical condition is applied per each particular program level. If the student completes one program, and advances to a different program level, the student will be allowed a second aggregate 12-month period in which he or she may be authorized to reduce course load.

An F–1 nonimmigrant who has already received authorization to reduce course load for academic difficulties remains eligible for the aggregate 12-month period to reduce his or her course load due to illness or medical condition.

A student who is unable to resume a full course of study within the time limits previously specified will either have to leave the U.S. and reapply when

he or she is able to resume a full course of study, or change to a more appropriate nonimmigrant classification to continue medical treatment in the U.S.

The Service recognizes that there may be cases in which an F–1 student may need authorization to reduce his or her course load for more than 12 months while pursuing a single program level (for example, while studying for an undergraduate college degree). However, to allow a student to pursue less than full time study for an extended period of time with no limits opens the student program to a greater possibility for abuse. Furthermore, such extended authorization would run counter to the definition of a student as set forth in section 101(a)(15)(F) of the Act which requires that a student pursue full-time study.

As specified in the proposed rule, an M–1 student may only be authorized to reduce course load for a reason of illness or medical condition, and such authorization may not exceed an aggregate of 5 months. A school official must verify the continuation of the authorization at each term or session by updating the authorization in SEVIS. However, as previously noted, the Service cannot permit an institution to authorize a student to pursue less than full-time study for an extended period of time.

On a related topic, many commenters suggested that the documentation required to support authorization to drop below a full course of study for illness or medical condition be expanded to include documentation submitted by counselors, psychologists, and other alternative medical practitioners. The Service adopts this suggestion and will allow DSOs to accept medical documentation provided by licensed medical doctors, doctors of osteopathy, or licensed clinical psychologists to substantiate a student's reason for dropping below a full course of study for illness or medical condition.

Some comments contended that students with long-term medical conditions, chronic illnesses, or learning disabilities may require a longer-term reduction in course load. The Service cannot, however, permit an unlimited reduction in course load, as this would undermine the premise of the F–1 and M–1 nonimmigrant student program. The Service believes that the existing minimum requirements for defining a ''full course of study'' are broad enough to accommodate students that may not be able to take a rigorous course load.

Finally, one commenter suggested that the Service include a specific provision in § 214.2(f)(6)(iii) to allow a DSO to authorize a reduced course load for graduate students enrolled in less than full time coursework. The Service does not believe that such a provision is necessary. The current regulation at § 214.2(f)(6)(i)(A) allows the DSO to make the determination of whether the graduate student is pursuing a full course of study. The determination is left to the DSO in this case because even though graduate students may not be enrolled in full-time classes, the school may still consider them to be a full-time student while they conduct research or work on their dissertation, for instance. As long as the student is pursuing what the institution considers to be a full time graduate program, the student is maintaining a full course of study. If the student is not pursuing full time study as determined by the DSO, then the student would not be maintaining lawful student status unless the DSO has authorized a reduced course load in accordance with the provisions of § 214.2(f)(6)(iii).

V. Transfers

Several commenters suggested that the Service permit F–1 students to transfer schools during the 60-day grace period following completion of studies or after completion of optional practical training. Although not explicitly authorized in previous regulations, the Service has accommodated school transfers within the 60-day period and has designed SEVIS to continue this practice. The final rule explicitly permits the transfer of student records in SEVIS during this 60-day period in § 214.2(f)(5)(iv). However, to clarify, the DSO must indicate the school to which the student intends to transfer in SEVIS. Therefore, the initiation of a student record transfer in SEVIS can only be carried out after the student has completed the application and acceptance process and has determined the school to which he or she is transferring.

The Service is also limiting the length of time a student may remain in the U.S. while transferring between schools. The student may not remain in the U.S. between programs if the student will not resume classes within 5 months of transferring out of the current school, or within 5 months of the program completion date as indicated on the Form I–20 issued by the current school, whichever date is earlier. In the case of a student authorized to engage in post-completion optional practical training (OPT), the student must be able to resume classes within 5 months of transferring out of the current school that recommended OPT or the date the OPT authorization ends, whichever is earlier. For example, in instances where a DSO initiates a transfer within the 60-day period following completion of studies, in order to remain in the United States between transfer of programs or schools, the 5 month period begins tolling on the date the program was completed, not the date the DSO initiated the transfer. The initiation of a transfer out date occurs when the DSO enters a date for the release of the student's record to the transfer school. While the DSO may enter any date reasonable and appropriate for a student's circumstances, in most instances, the DSO will want to enter the release date as the date the student completes the last day of the academic term at the current school.

The Service also received many comments stating that SEVIS should not prevent transferring F–1 students from applying to more than one school. In response to these comments, the Service wishes to clarify that this final rule does not place any limit on the number of schools to which a transferring F or M student may apply. The transferring student may apply to and be accepted by any number of schools. However, the rule restricts the number of SEVIS Forms I–20 that may be issued to a transferring student. For purposes of fraud prevention, as well as privacy and paperwork reduction concerns, SEVIS will allow a student's record to be available only to one school at a time. Once the student decides which school he or she intends to transfer, the DSO of his or her current school will update SEVIS to reflect this choice and will enter the release date for the student. The student's name will then appear in SEVIS at the transfer school as an ''alert'' containing the student's name and release date. When the release date is reached, the transfer school will be able to issue the transferring student a new SEVIS Form I–20. In most cases, schools will be not be sending the acceptance letter and the SEVIS Form I–20 at the same time. If the student changes his or her mind prior to the release date, the DSO at the current school may cancel the transfer request. If the transfer request is cancelled the student may continue studies at the current school or make a new request to be transferred to another school. However, once the release date has been reached, the DSO at the current school may no longer access the student's record in SEVIS. Therefore, a student who changes his or her mind after the release date must work with the DSO of

the transfer school to accomplish a second transfer to another Service-approved school. In such cases, the DSO of the transfer school must complete the transfer process for the student in SEVIS and then initiate any subsequent transfer that the student may request.

The transfer process for M students differs from that of F students, in that M students must apply directly to the Service in order to transfer schools. In order to ensure that the M transfer student may continue in his or her studies without significant interruption, the M nonimmigrant transfer process allows the M transfer school to issue a SEVIS Form I–20 prior to the transfer student's release date. The initiation of the SEVIS student transfer process still requires that the current school enter the name of the M transfer school, and it is only the transfer school indicated in the system that can issue the SEVIS Form I–20 prior to the release date. The M student may then apply to the Service for a transfer without having to wait for the release date, which will most likely be at the end of the academic term. However, the transfer school will not have complete access to the student's SEVIS record until the release date is reached.

The M student may begin attending the transfer school pending the adjudication of his or her transfer request. However, if the transfer request is denied by the Service after the student has begun his/her program at the transfer school, the SEVIS student record will be automatically terminated and the student will be considered out of status. Therefore, students are strongly encouraged to file their applications for transfer approval with the Service Center as soon as they are able. As stated above, the initial SEVIS Form I–20 from the transfer school can be issued as soon as the current school indicates in SEVIS that the student intends to transfer to that school. The student will be notified by mail of the Service's decision. The DSO will be notified of the Service's decision on an M transfer via a system alert. Additionally, the DSO may view the status of any transfer request by either accessing the student's record or by viewing the list provided of pending/adjudicated applications in SEVIS. The process for a SEVIS transfer for both F and M students allows the students to apply to multiple schools but places the burden on the students to weigh their options and decide on one particular school before the issuance of a new SEVIS Form I–20 by the transfer school.

Several commenters stated that the limited time frame imposed by the SEVIS transfer process will adversely affect current business practices at some schools. Commenters indicated that, because a transfer school can only issue a new SEVIS Form I–20 on the student's release date, there will not be enough time for the transfer school to issue a SEVIS Form I–20 prior to the start of the new semester, especially in instances where the transfer student is returning home for a vacation.

In response, the Service notes that a transfer student who is traveling abroad for a vacation and who plans to attend a different school upon his or her return must make arrangements with the transfer school to ensure that all necessary documentation is received in a timely manner. For example, the student may obtain his or her SEVIS Form I–20 prior to departure, or request that the transfer school forward the SEVIS Form I–20 to his or her address abroad (just as the schools now do for newly-applying students).

Some commenters suggested that the Service allow the student's SEVIS record to be accessible by both the current and transfer schools until the transfer is complete.

The Service cannot adopt this suggestion. In its outreach efforts, the Service found that privacy was of the utmost concern to the education community. Schools did not want other schools to have access to any of their students' school information. The SEVIS transfer process was designed with such concerns in mind. To allow students' records to be open to both schools would allow one school to have access to another school's data. One commenter noted that the reporting time frames for transfer for non-SEVIS schools were different from those for SEVIS schools and suggested that the Service use a standard 30-day reporting time period. For the sake of consistency in the transfer process, the Service adopts this suggestion in the final rule and allows non-SEVIS schools to send notification of transfer to the Service data processing center within 30 days.

Finally, commenters suggested that the Service use consistent terminology in its description of schools. The Service agrees with the comment and in the final rule adopts the terms ''current school'' and ''transfer school.''

VI. Thirty-day Advance Admission

Many commenters stated that the 30-day limit prior to the program start date is unreasonable. Commenters cited a student's need to find adequate housing, attend orientation, and begin research projects as reasons why a student might need additional time prior to the program start date.

The Service, however, does not agree with the commenters. The DSO is already able to take account of a student's obligations pertaining to orientation, research projects, etc., prior to the start of classes. Form I–20 states, ''The student is expected to report to the school not later than (date) and complete studies not later than (date).'' A DSO may enter a date that would accommodate the beginning of research projects or allow a student to attend an orientation session. The DSO is permitted to set a program start date that accommodates the need for students to be in attendance at the school for such required activities.

Information pertaining to student housing is readily available to prospective students and in many cases housing is arranged by the school. Although the Service recognizes that students need some time to find suitable housing, the Service does not believe that the advance admission period needs to be extended beyond 30 days for this reason. A period of 30 days prior to the time the student is expected to be in attendance at the school, as provided by this rule, should be adequate for students to make arrangements for housing.

Finally, the Service is considering a change to the SEVIS Form I–20 to capture two distinct dates: (1) the date by which the student is expected to enter the country (*e.g.*, to begin research or on-campus employment, attend orientation), and (2) the date that classes will commence.

VII. Grace Periods

Many comments were received on the proposed rule's effect on students who fail to maintain status by withdrawing from classes. Commenters suggested that the Service consider reasons other than medical conditions as a legitimate basis for withdrawing from classes, thereby entitling students to a reasonable grace period.

The Service agrees with these comments, in part, but must distinguish between instances where a student notifies the DSO and receives authorization to withdraw versus those where a student never attends or stops attending classes without DSO authorization. In instances such as a death in the family, unforeseen financial hardship, or a determination that the educational program is not appropriate for the student, a DSO may authorize the student to withdraw from classes. In such cases, the student will be afforded a 15-day grace period in which he or she may make and complete arrangements for travel and departure. In instances where the student has never registered

at the school or withdraws without DSO authorization, the student may not be afforded the 15-day grace period.

The importance of notifying the DSO and obtaining permission for withdrawal from classes cannot be overemphasized. A solid relationship and line of communication must be established between the student and the DSO to avoid adverse consequences to a student affecting his or her nonimmigrant status.

VIII. Concurrent Enrollment

Several commenters requested that the Service clarify the language for concurrent enrollment. The commenters indicated that it was common for a student to be enrolled in an English language program as well as a university program. In such instances, the requirements for maintaining a full course of study vary. For English language programs, the Service definition requires clock hours, while for university programs the requirement is for credit hours. The commenters requested the Service allow the DSO to make the determination as to what constitutes a full course of study in such cases. The Service agrees with the commenters and has added clarifying language to the rule allowing the DSO to make these determinations.

IX. On-line and Distance Education Courses

Some commenters suggested that the Service's proposed restriction of one class or three credits per semester of on-line or distance education courses is a restriction that should be made by schools, not by the Service. Other commenters stated that eliminating any distance education or on-line courses for English language programs or elementary and secondary students is too restrictive. Additional commenters stated that the Service's intended restriction will have a negative impact on their programs as more programs add on-line courses.

Service finds merit in the argument against prohibiting distance education and on-line courses for elementary and secondary students. Accordingly, the Service has removed the restriction and will allow elementary and secondary students to count distance education and on-line courses in their determination of a full course of study.

The Service does not agree with the commenters that this rule restricts schools from enrolling any student they wish in an on-line or distance education course. The rule does restrict a student in the United States in an F–1 nonimmigrant status from being able to consider more than one distance education or on-line class or three credits per semester towards his or her full course of study requirements. Furthermore, the rule restricts vocational students and English language students from being able to consider any on-line or distance education courses toward the full course of study requirements. Such restrictions do not prohibit international students from completing programs that are offered on-line, as the students can enroll in the course without being admitted to the United States.

To clarify, the restriction that this rule places upon distance education or on-line courses is that no more than one course or three credits can be counted toward the full course of study requirements. A student currently pursuing a full course of study may add as many distance education or on-line courses as he or she wishes in addition to the courses counting toward the full course of study. In the case of M–1 students and English language students, although these courses cannot be counted toward the full course of study requirement, these students are not prohibited from taking additional courses on-line or through distance education.

X. Practical Training

Several commenters requested that the Service change the language in the optional practical training provision from ''9 consecutive months'' to ''one full academic year.'' The commenters stated that many schools do not operate on a 9-month calendar and, therefore, the Service's 9-month requirement does not adequately address their needs. The Service agrees with the commenters and notes that the term ''one full academic year'' is already used in other parts of the Service regulations pertaining to practical training. The final rule will, therefore, incorporate the term ''one full academic year'' throughout the appropriate sections of § 214.2(f) and § 274a.12.

Although commenters were generally supportive of the Service allowing students involved in a study abroad program to use that time toward the 9-month requirement (now ''one full academic year'') for practical training, the Service must make one point of clarification to the rule. For a student to use the time spent studying abroad toward the one full academic year requirement, the student must have spent at least one full academic term in a full course of study in the United States prior to going abroad to study.

Some commenters requested that the Service broaden the provision even further to allow graduate students conducting research abroad the same benefit. The Service cannot adopt this suggestion at this time. In the case of students involved in a study abroad program, there is a defined curriculum with courses that must be taken. However, the Service is not satisfied that the same is true for graduate students conducting research abroad. The Service may consider this in a future rulemaking.

Several commenters pointed out that the proposed rule eliminated § 214.2(f)(10)(ii)(A) (*3*) and (*4*). The Service notes that this was an unintentional error. This final rule combines those two clauses and revises the language for clarity.

Many commenters suggested that the Service allow students to apply for practical training prior to fulfilling the 9-month limit (now one ''full academic year'') but not be allowed to commence practical training prior to that time. The commenters indicated that such a provision is necessary for those students who want to participate in practical training in the summer following their first academic year but whose requests for practical training cannot be adjudicated in time for the students to begin in the summer. Other commenters made similar suggestions for students enrolled in one-year programs who, due to the new limitation that optional practical training be applied for prior to the completion of studies, would be unable to apply.

Although the Service believes that changing the term ''9 months'' to ''one full academic year'' will resolve most of the problems cited by the commenters, the Service will allow F students requesting optional practical training to submit their application up to 90 days prior to completing ''one full academic year.'' In such cases, the DSO must indicate on the Form I–20 and/or update SEVIS to show that the ''from date'' in which the DSO is certifying is the date that the student completes a full academic year of enrollment. While the Service may adjudicate the request prior to the student's completion of one full academic year, employment authorization will only be granted from the date that the student actually completes a full academic year. The student may not begin working until the date specified on the employment authorization document. The Service, therefore, does not adopt the commenters' suggestion that the Service allow DSOs to approve optional practical training or give a type of interim employment authorization until the student completes one full academic year of enrollment.

Several commenters also requested that the Service clarify whether students, other than F–1 nonimmigrants, who have been lawfully enrolled in a Service-approved school for one full academic year, could also be eligible for optional practical training. However, while the Service agrees that this issue needs clarification, this was not an issue addressed in the proposed rule and the Service needs more time to consider these issues. The Service may consider such clarification in a future rulemaking.

One commenter requested that the Service clarify the responsibility of a DSO with regard to a student to whom the DSO has issued a Form I–20 and certified for optional practical training following completion of studies. The Service appreciates the opportunity to clarify these responsibilities in the final rule. Section 214.2(f)(10)(ii)(E) provides that a DSO who recommends a student for optional practical training remains responsible for maintaining the student's records in SEVIS during the time that training is authorized. During the period in which a student is authorized by the Service to engage in optional practical training following completion of studies, a student must notify the DSO if his or her name or address changes, or if the student wishes to discontinue training. Similar to the provision in current regulations that a student engaged in optional practical training have a Form I–20 endorsed within the last 6 months by the DSO for reentry, the DSO is responsible for updating the SEVIS record of any student participating in post-completion practical training. The DSO and student must continue to communicate in order to ensure that the student does not take any action that would adversely affect his or her nonimmigrant status. For example, if the student indicates that he or she has changed address or terminated employment for any reason prior to the period authorized by the employment authorization document and does not intend to resume employment, the DSO must notify the Service by updating SEVIS.

Finally, one commenter requested that the Service allow students to use a school's address for purposes of receiving employment authorization documents. While this practice will not be authorized by this final rule, the Service is considering incorporating this practice into the operating procedures of the Service centers.

XI. Employment

Commenters also noted that the Service did not include a description of the process for endorsing employment in SEVIS other than practical training. In response, the Service has added language to the final rule incorporating procedures for the endorsement in SEVIS of employment authorization based upon severe economic hardship and internships with an international organization. At this time there are no such update requirements for on-campus employment.

Another commenter requested that the Service clarify when an F–1 student may begin working on-campus incident to status prior to the beginning of classes. The commenter suggested that the Service distinguish between work associated with being a Teacher's Assistant or Resident Assistant and, for example, working in the campus bookstore.

The Service agrees that this provision needs clarification. The Service will permit an F–1 student to begin on-campus employment prior to the start of classes. While it is the responsibility of the DSO to indicate a program start date that accommodates the student's particular needs for employment, the DSO is not permitted to indicate a program start date more than 30 days prior to the start of classes for the purpose of on campus employment. However, the Service does not impose any limitation on the type of on-campus employment in which a student may engage prior to the start of classes.

For off-campus employment based on severe economic hardship, the current rules require that the student apply to the Service based on a favorable recommendation of the DSO. Some commenters requested that the Service allow DSOs to grant F–1 students permission to work based on severe economic hardship without any review by the Service. That suggestion is beyond the scope of the proposed rule, and the Service is not prepared to change existing processes at this time to allow a DSO to grant such a benefit. However, the Service may consider this suggestion when it reviews student employment issues at a future date.

Finally, this final rule makes conforming amendments to § 214.2(f)(9) and § 274a.12 to remove the reference to filing a wage and labor attestation for off-campus employment. As indicated in the proposed rule, the requirement for a wage and labor attestation was part of a pilot program that has sunset. The final rule also amends references in § 274a.12 to include the current DOS Certificate of Eligibility, Form DS–2019 and to cite to current exchange visitor program designation regulations.

XII. Extensions

Several commenters requested that the Service amend the language of § 214.2(f)(7)(i) to remove the reference to a student being ''unable to complete a full course of study in a timely manner,'' indicating that this phrase implies that a student has done something wrong. Commenters cited illness and family emergencies as possible reasons why a student may take longer to complete his or her program, but should still be considered to be pursuing his or her program in a timely way. The Service has no objection to the removal of this language and has included a more neutral description in the final rule.

XIII. Reinstatement

Many commenters contended that the provisions in the proposed rule for reinstatement were unnecessarily strict. Commenters urged the Service to provide relief for students who are adversely affected by ''technical or computer errors'' in SEVIS, and suggest that the Service adopt provisions similar to the provisions in DOS regulations that allow for a correction of ''minor or technical infractions.'' Commenters stressed that DSOs will make mistakes occasionally, especially when dealing with a new computer system. Other commenters stated that to punish students for mistakes on the part of the DSO is overly punitive.

The Service agrees that there may be a possibility that errors on the part of SEVIS or other technological failures may cause a student to fall out of status. Therefore, the Service has added § 214.3(g)(4) to allow for a student's record to be administratively corrected in situations where the error in question resulted from technological errors or errors on the part of SEVIS. To administratively correct a student's record in instances of SEVIS error or technological failure, the DSO must contact the SEVIS system administrator to explain the circumstances that caused the correction to be requested, with documentation if necessary, as provided in § 214.3(g)(4). An administrative correction by the system administrator will be completed without fee.

However, while the Service recognizes that a DSO may make a mistake in a student's record that causes the student to fall out of status, the Service does not believe that such errors merit an administrative correction. Ultimately, it is the student's responsibility to ensure that he or she remains in status and is in compliance with the regulations at all times. That is not to say that the student will not be

afforded a remedy in these situations. On the contrary, in instances where the DSO was neglectful or inadvertently failed to update or extend a student's status, the student is permitted to file for reinstatement and establish that the actions on the part of the DSO were beyond his or her control. Where the Service finds that a DSO has repeated violations of Service regulations or finds malfeasance on the part of a DSO, the Service may withdraw the approval of the designated school official.

Other commenters stated that the Service should abandon the proposed 5-month period as the demarcation of the outer limit for reinstatement and instead consider the overall record of the student. While the Service believes that 5 months is generally sufficient time for a student who has fallen out of status, unintentionally or otherwise, to become cognizant of this fact and to attempt to remedy the situation, the Service also recognizes that there may be legitimate situations in which this is not possible. In fairness to these students, the Service has created a provision in the final rule for a rebuttable presumption that a student who has been out of status for more than 5 months is ineligible for reinstatement unless the student can provide a substantial reason for the delay and an explanation of how the student filed the request for reinstatement as promptly as possible under the circumstances. If the student provides sufficient documentation, the presumption of ineligibility may be rebutted. Such a provision strikes a balance between the Service's desire to establish a limit on reinstatement requests while still accommodating those students with extenuating circumstances.

XIV. Reporting Current Name and Address

Several commenters requested that the Service consider allowing students who live on-campus to list a mailing address in place of a physical address. Commenters noted that many students living on-campus, including boarding students in secondary schools, may only be able to receive mail via a mailing address. The Service agrees with the commenters, and has made a provision permitting students who physically reside on campus, but cannot receive their mail at a campus address, to list a mailing address that they use at the school rather than a physical address, provided that the school maintains a record of and, upon request, provides the exact location of the alien's residence. Likewise, in order to accommodate limited situations where similar circumstances might exist for students living off-campus, or for exchange visitors, a student's or exchange visitor's mailing address may be listed. The school or exchange visitor program, however, must maintain a record of and, upon request, provide the exact location of the alien's residence. The Service intends to modify SEVIS to accept both a mailing address and physical address. Once SEVIS is modified, in cases where the mailing and physical address are not the same, the school will be required to report both the current mailing and current physical address in SEVIS.

Additionally, commenters stated that requiring students to report changes of address to their DSO rather than directly to the Service on Form AR–11 may result in the DSO being accused of failing to update a student's SEVIS record when, in fact, the student failed to report his or her address change to the DSO. The commenters suggested that students be required to report address changes directly to the Service.

The Service, however, cannot adopt this suggestion. To do so would undermine the primary purpose of SEVIS; namely, to maintain current, accurate information on all F and M nonimmigrants. Currently, all nonimmigrants are required to report a change of address to the Service by submitting Form AR–11. The notification of the change of address is submitted by the nonimmigrant through the mail. The Service is not stipulating what interaction must take place between the student and the DSO to document notification of address change by the student. To avoid the type of situation cited by the commenters, schools may establish business processes to document when a student reports a change of address. For example, a school may require students to submit a completed Form AR–11 to be kept on file in the international office, in addition to the school updating SEVIS as required.

Finally, the Service wishes to clarify that, while the timely reporting and update of a student's address in SEVIS satisfies the alien student's requirement to notify the Service of a change of address as specified in 8 CFR 265.1, such notification does not necessarily exempt the student from reporting a change of address as required by other applicable regulations, statutes or programs. Specifically, a nonimmigrant student required to report under the National Security Entry-Exit Registration System (NSEERS), 8 CFR 264.1(f), must report a change of address as mandated by that program, in addition to complying with SEVIS reporting requirements.

XV. Relating to Reporting Requirements of § 214.3(g)(3)

One commenter requested that the requirement in section § 214.3(g)(3) for schools to report, ''any other notification request made by SEVIS to the DSO with respect to the current status of the student,'' be removed based on the assertion that the requirement is overly broad.

The Service does not adopt this suggestion. The primary purpose of SEVIS is to maintain complete and up-to-date information on all foreign students. For this reason, the DSO needs to respond in a timely fashion to requests from the Service relating to the current status of any particular student.

Another commenter associated with independent, secondary schools asked the Service to consider allowing such schools to report on students only one time per year. The commenter stated that it is time-consuming to update student records each term because students at such schools register only once a year.

The Service does not adopt this suggestion. The requirement in question applies only to academic terms that run longer than 6 months. The DSO for such schools will be sent an electronic message from SEVIS requesting the DSO to verify that the students are still enrolled. To allow the DSO in such schools to update student records only at the time of initial registration would undermine the effectiveness of SEVIS.

Another commenter stated that the requirement of § 214.3(g)(3)(iii)(C), which requires schools to report the start date of the student's next term, is burdensome and inherently impossible because it requires the DSO to know the student's intent. The Service does not agree with this commenter. The Border Security Act requires that all schools to report in SEVIS each academic term as to whether a student has registered or not registered. This requirement is one of the most essential requirements in SEVIS because it enables SEVIS to identify those students who have failed to return to school following a term or vacation.

Finally, one commenter questioned the effect, if any, that the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g (FERPA) has on the information collected and reported in SEVIS. Although FERPA restricts the ability of an educational agency or institution that accepts certain Federal funding to disclose personal information contained in a student's educational record, this final rule makes clear that FERPA does not relieve any approved school or designated exchange

program of the duty to comply with the SEVIS reporting requirements.

Section 641 of IIRIRA requires approved schools and designated exchange visitor programs to collect the information specified in section 641(c). Section 641(d) makes it clear that schools may not enroll F or M nonimmigrant students and that exchange visitor programs may not accept J nonimmigrants unless the school or exchange program collects the information and reports it to SEVIS as required.

The general rule is that two statutes that relate to the same issue must be read so as to give effect to both. Thus, section 641 of IIRIRA can properly be considered an exception to FERPA, such that an educational agency or institution does not violate FERPA by disclosing only so much as section 641 of IIRIRA requires the agency or institution to disclose. Section 641(c)(2) of IIRIRA expressly provides that FERPA does not apply to F, J, or M nonimmigrants, to the extent that the Attorney General determines that waiving FERPA is necessary to implement SEVIS. The Commissioner has authority to make this determination on the Attorney General's behalf. That the Commissioner has made this determination was implicit in the proposed rule since the proposed rule required approved schools and designated exchange programs to provide the information, or risk the loss of ability to enroll or accept F, J, or M nonimmigrants. The final rule includes new language in 8 CFR 214.1 to make this determination explicit. This new provision is stated in § 214.1, rather than § 214.3 to make clear that the FERPA waiver applies to J nonimmigrants as well as to F and M nonimmigrants.

XVI. Dependents of F–1 and M–1 Nonimmigrants

Many commenters stated that F–2, J–2, and M–2 nonimmigrants should be allowed to enroll in full-time study, without being required to change status. The Service does not adopt this suggestion. The need to monitor nonimmigrants being educated and trained in the United States is of vital importance to the national security of the United States. The value of SEVIS would be undermined if the Service were to adopt the commenters' suggestion.

Other commenters suggested that the Service remove the language ''avocational or recreational'' from the types of study that may be permitted by F–2 and M–2 dependents as DSOs may have difficultly determining what study is avocational or recreational and what is not. While the Service will not remove such language from the rule, the Service provides the following clarification. If a student engages in study to pursue a hobby or if the study is that of an occasional, casual, or recreational nature, such study may be considered as avocational or recreational. The concept of avocational or recreational is not new, but is a long-standing policy applied by both the DOS and the Service for the interpretation of the B–1/B–2 nonimmigrant visa.

It should be noted that this regulation permits F–2 and M–2 nonimmigrants to attend elementary, middle and high school on a full-time basis. Furthermore, if a dependent of an F–1 or M–1 wishes to pursue his or her education full time, beyond what is avocational or recreational, or at the elementary, middle, or high school level, he or she has the option to change status to that of an F–1 or M–1 nonimmigrant.

One commenter requested that the Service clarify the status of those F–2 or M–2 dependents enrolled in a school in a full course of study prior to the effective date of this final rule. In response, the Service will allow an F–2 or M–2 dependent enrolled in a full course of study prior to January 1, 2003, to continue studies provided they apply for a change of status on or before March 11, 2003.

Finally, many commenters stated that the Service should allow F–2 and M–2 nonimmigrants to be authorized for employment. The existing regulations, § 214.2(f)(15) and (m)(13), prohibit employment for F–2 and M–2 dependents. The Service did not propose any change relating to employment authorization for dependents in the proposed rule and, therefore, this suggestion is beyond the scope of this rulemaking proceeding. The Service will not incorporate any changes relating to this issue in the final rule.

XVII. Electronic Filing Issues

The Service incorporates many processes electronically into SEVIS and that are addressed in this final rule. For example, the requirement to complete and submit a paper Form I–538 attached to paper copies of the Form I–20 for updates has been completely eliminated. Furthermore, the Form I–17 is filed electronically in SEVIS and fee payment is made through Pay.gov on the Internet.

While SEVIS is a significant step forward in the transformation to e-Gov, there remain certain processes related to nonimmigrant students that are not incorporated into SEVIS, primarily because such processes are in regard to a broader range of nonimmigrants, not specific to F, M, or J visa classifications. As noted in this final rule, the Form I–765, Application for Employment Authorization, utilized for application for Optional Practical Training and other work authorization by a nonimmigrant student, is a hybrid process that includes SEVIS, but also the Service's benefit application process. Likewise, the Form I–539, Application to Extend/Change Nonimmigrant Status, is utilized for the M–1 transfer, M–1 extension, and the reinstatement processes. These are also hybrid processes that are used not merely in connection with SEVIS, but also for other Service processes.

The Service is currently in the process of establishing and implementing a new enterprise architecture to its information technology systems and business processes Service-wide. In order to further adjust business processes and fully take advantage of e-Gov systems and efficiencies, the Service will promote the electronic filing of applications. The Service wishes to take advantage of e-Gov and the Internet, while remaining flexible in order to best utilize emerging and future technologies to better serve the public. Accordingly, the Service hopes to be able to offer e-filing of the Form I–765 in fiscal year 2003, and e-filing of the Form I–539 by fiscal year 2005.

Currently the Form I–17 is filed electronically, but in accordance with the Service's full certification rule for SEVIS (67 FR 60107) there are certain supporting documents and signatures physically collected during an on-site visit to the school. The Service is looking at the potential to enhance SEVIS to accommodate electronic attachments of supporting documentation to the electronic Form I–17. In addition, the Service will be examining the issue of electronic signatures.

The Service also wishes to note that SEVIS addresses more than just the collection of data for monitoring and tracking of foreign students. In addition to providing efficiency to the Service's processes for the review and adjudication of items such as Form I–17 educational institution application and reinstatement, the system also provides value-added features that should prove useful to the school user. For example, SEVIS provides ''ticklers'' and system alerts to the school, such as when a foreign student is issued a visa (once data share with DOS Consular Affairs is in effect), or when a nonimmigrant student enters through a port-of-entry (once data share with entry data is in

effect). There are also system alerts for when a student is coming to the end of their program, as well as a selection of numerous reports available to the school user. Furthermore, the system provides a search engine functionality to enable direct queries based upon the SEVIS ID# from the Form I–20 issued by the school, as well as enhanced search capability to search by multiple parameters and data elements.

Good Cause Exception

This rule is effective on January 1, 2003. The Service finds that good cause exists, under 5 U.S.C 553(d), for making this rule effective with less than the usual 30-day effective date. The USA PATRIOT Act, Public Law 107–56, mandates that SEVIS be fully implemented and expanded prior to January 1, 2003. Because of vital national security concerns that underpin the USA PATRIOT Act, and the Enhanced Border Security Act, Public Law 107–173, promulgation of this rule with a 30-day delayed effective date would be contrary to the public interest. This final rule does not vary greatly from the proposed rule published on May 16, 2002. Many of the changes in this final rule were made at the request of the affected community. As such the final rule provides more flexibility and imposes less of a burden upon the affected community. While the Service will not give the entire 30-day period prior to the effective date of this rule, the difference in the amount of time between the date of publication of this rule and the effective date of this rule still affords the affected community with sufficient notice for compliance.

Regulatory Flexibility Act

The Commissioner, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although some schools may be considered small entities, the use of SEVIS as a means for recordkeeping and reporting will streamline the processes currently in existence.

SEVIS uses technology already in place at most schools, and has been designed for use over the Internet. Institutions need only have access to a web-browser to gain access to the Internet and will not require any software to download. The Service will not charge a subscriber or user fee in order to use SEVIS. However, while there is no charge for access to SEVIS, there might be undetermined, individual, organizational costs to upgrade vendor software or campus information technology systems to use the batch-method interface with SEVIS.

The Service has taken this cost into account and has developed SEVIS to utilize common standards. As previously discussed in the supplementary information, schools using SEVIS will no longer have to print out, file, and mail as many paper forms. Indeed, there should be little to no additional cost for schools that do not choose to use the optional batch processing capability. In fact, these schools may experience some savings as a result of the efficiencies that SEVIS will provide. Moreover, while the initial monetary impact on schools that choose to use batch capability may be greater, those schools might experience long-term savings because the automated process of maintaining student records for purposes of SEVIS would likely reduce future personnel costs. These decisions as to cost/benefit tradeoffs will be up to the discretion of each school. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

1. Purpose for Regulation

For close to twenty years, Service regulations have required the use of the Form I–20 and have required schools to maintain records on nonimmigrant students enrolled at their institution. These regulations also have required schools to furnish such information to the Service upon request. Schools have been required to maintain records and updates on student information such as the student's name, date and place of birth, country of citizenship, address, status, date of commencement of studies, and a photocopy of the student's Form I–20. This final rule incorporates similar collection and reporting requirements, with some additional information collection and reporting procedures that are mandated by IIRIRA, the USA PATRIOT Act, and the Enhanced Border Security Act. This rule is necessary to improve and streamline the reporting and recordkeeping of F, J, and M nonimmigrants by establishing a process for the electronic reporting DSOs of information required to be reported to the Service, and providing clear standards governing the maintenance, extension and reinstatement of student status.

Schools will be required to report some additional information that they were not required to maintain in the past, and there are changes to reporting requirements as a result of the above statutory authority and this final rule. However, the implementation of SEVIS (an electronic and e-Gov system) mitigates the new elements and frequency of reporting. In order to create or update any student or exchange visitor related form (*e.g.*, Form I–20, Form DS–2019), the school or sponsor will now access SEVIS and enter the information electronically. Thus, the data is instantly collected in a central database before the form is ever printed. Because the information will be collected electronically, there will no longer be a need for multiple copies of forms. Neither the Service nor the DOS will need a separate paper copy for data entry because both agencies can access SEVIS in real time. Likewise, schools and sponsors will no longer be required to maintain their own paper copy of the record, because it will be accessible through SEVIS.

2. Assessment of Costs

a. *One-time transition costs associated with continuing students and exchange visitors.*

The Service has set January 30, 2003, as the date by which all schools must use SEVIS in order to issue a new Form

I–20. However, in order to allow schools sufficient time to enter all current students in SEVIS, the Service has determined August 1, 2003, to be the date upon which all current or continuing students must be entered into SEVIS, unless such students require a new Form I–20 because of a reportable action such as new visa issuance.

While some percentage of current or continuing students may graduate or complete their programs prior to August 1, 2003, those students that are continuing a course of study as of August 1, 2003, must be entered into SEVIS by that date and issued a SEVIS Form I–20. This requirement for schools to input all current or continuing students will be a one-time event in the first year for transition to SEVIS.

The following estimate is based upon the amount of time it would take to complete a Form I–20 in order to enter a continuing student in SEVIS.

Continuing student reporting burden	
a. Number of Continuing Students	625,000
b. Number of Continuing Exchange Visitors	275,000
c. Number of Responses per Respondent	1
d. Hours per Response	.52
e. Total One-time Reporting Burden	468,000
f. Total Public Cost	$4,680,000

The following estimate is based upon the amount of time it would take to complete a SEVIS Form I–20. This one-time reporting burden for continuing students and exchange visitors is based upon a standard requirement and process for each response. As such, the school or exchange program should not require much time to familiarize or refresh themselves on the relevant regulatory provision and process. The projected hours per response were derived by breaking the process into two basic components:

	Minutes
Learning about the Law and the Program	1
Data Collection and Input	30
Total Hours per Response	[1] 31

[1] .52 hours.

The total one-time reporting burden was derived by multiplying the number of applicant respondents (estimated continuing student plus estimated continuing exchange visitors = 900,000) × frequency of response (1) × average response time of 31 minutes (.52 hours) per response. The estimated one-time public cost estimation is based on the number of respondents (900,000) × 31 minutes (.52 hours) per response × $10 (average hourly rate).

The number of applicant respondents, 625,000 students, is the Service's best estimate based upon experience, statistics, and industry sources such as the 2001 Open Doors Report on International Educational Exchange produced by the Institute of International Education. The number of applicant respondents, 275,000 exchange visitors, is the best estimate provided by the Department of State, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs.

b. *Operational costs.*

The Service has worked closely with the Department of State as well as the American Council on Education (ACE), NAFSA-Association of International Educators, and others to obtain their views on the availability of data, frequency of collection, clarity of instructions, disclosure and the data elements to be reported. In addition, the educational community has attended several working group sessions and high-level policy discussions. As a result of these consultations, the Service has incorporated many suggestions in the SEVIS requirements.

The following estimate is based upon the amount of time it would take to complete a SEVIS Form I–20. As the information being collected by SEVIS will differ for each individual depending on the event being updated, the data required for entry into SEVIS cannot be determined on a consistent basis. As such, the Service is using the SEVIS Form I–20 as the standard, and averaging the amount of data entry in SEVIS per response across initial SEVIS Form I–20 entry and subsequent update response.

Annual reporting burden	
Number of Students	625,000
Number of Exchange Visitors	275,000
Number of Responses per Respondent	5
Hours per Response	.333
Total Annual Reporting Burden	1,498,500
Total Public Cost	$14,985,000

The projected hours per response for this collection of information were derived by first breaking the process into three basic components:

	Minutes
Learning about the Law and the Program	10
Data Collection and Updates	5
Adjudication, notification, reports	5
Total Hours per Response	20

The Service anticipates that the initial data entry may require 30 minutes. However, once the records are uploaded into SEVIS, the updates and maintenance of the information will require considerably less time. Included in this estimate is time associated with each response for the school or exchange program to familiarize or refresh themselves as to the relevant regulatory provision and process. Unlike section (a) above, updates and other processes beyond the initial data entry of a Form I–20 (or Form DS–2019) may be varied, and as such may require a small amount of time to learn about the law. We estimate approximately 10 minutes for the update of these records. In calculating the hours per response, we considered both the initial data entry of the Form I–20 and the update of information and estimated an average of 20 minutes per response. The Services estimates 5 responses per year for each respondent based upon a generalization that each student will require an initial Form I–20, the school will likely need to report registration of the student twice a year, and there may be one or two further responses such as a change of address, change of major, or request for employment.

The total annual reporting burden hours was derived by multiplying the number of applicant respondents (900,000) × frequency of response (5) × average response time of 20 minutes (.333 hours) per response. The estimated annual public cost estimation is based on the number of respondents (900,000) × 20 minutes (.333 hours) per response × $10 (average hourly rate).

c. *SEVIS Batch functionality.*

The use of SEVIS batch processing is a choice to be made voluntarily by each individual school. Therefore, any school cost to create, purchase, or upgrade technology to use batch processing is a business decision to be made by each school in context with their business processes, infrastructure, and cost/benefit assessment. Batch functionality is an optional method made available to schools and is not a requirement for SEVIS compliance.

Other than personnel costs to input and update student records in SEVIS, there is virtually no cost to schools as real time interactive capability only requires that the school have Internet access and a free browser. There is no other software necessary to use the real time interactive capability and there are

no recurring access fees. Therefore, for real-time interactive, there is no programming costs, server costs, and no software required to download or provide via CD–ROM, since SEVIS is accessed through the Internet similar to many commonly used Web sites.

In addition, those schools that do elect to incur any costs to create or purchase software to take advantage of SEVIS batch functionality would likely then not incur personnel costs and burden as described in section (a) above. Batch functionality entails school technology systems uploading larger amounts of data directly to SEVIS. As such, the cost of the one-time requirement of entering all continuing students in SEVIS may be substantially reduced since existing electronic records would be entered into SEVIS via a batch system-to-system upload. Furthermore, any start-up and maintenance costs incurred by schools using the SEVIS batch functionality might be highly cost effective in the longer term because, once the electronic interface is complete, the process of maintaining student records for purposes of SEVIS would be highly automated, thereby likely reducing the future personnel costs.

d. *Estimation of Total Cost*

The Service estimates that the total cost to implement and operate SEVIS the first year will be approximately $20 million. After the initial implementation costs are incurred, the Service estimates that the schools will incur yearly costs of less than $15 million to fulfill their ongoing SEVIS requirements. As schools become more adept at fulfilling these requirements, the Service expects that these costs may drop.

3. Assessment of Benefits

SEVIS implements IIRIRA, which requires the INS to collect current information, on an ongoing basis, from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors during the course of their stay in the United States. Furthermore, the President issued Homeland Security Directive No. 2 (HS PDD–02) that, in part, directs an end to the abuse of international student status. In addition, the USA PATRIOT Act amended IIRIRA to require full implementation and expansion of SEVIS prior to January 1, 2003. Furthermore, the Enhanced Border Security Act adds to and clarifies the collection of information and specifically requires an educational institution to report any failure of an alien to enroll not later than 30 days after registration deadline.

SEVIS enables schools and exchange program sponsors to transmit electronic information and event notifications, via the Internet, to the Service and DOS throughout a student or exchange visitor's stay in the United States. SEVIS will be informed of status events for students and exchange visitors including, but not limited to, entry/exit data, changes of address, program extensions, employment notifications, and changes in program of study. SEVIS will also provide system alerts, event notifications, and reports to the schools and exchange programs, as well as for Service and DOS offices.

Implementation of SEVIS will revise and enhance the process by which foreign students and exchange visitors gain admission to the United States. SEVIS will increase the Service's ability to track and monitor foreign students and exchange visitors in order to ensure that they arrive in the United States, show up and register at the school or exchange program, and properly maintain their status during their stay as valued guests in this country. SEVIS provides a proper balance between openness to international students and exchange visitors and the security obtained by enforcing the law.

SEVIS addresses more than the collection of data for monitoring and tracking of foreign students. In addition to providing efficiency to Service processes for the review and adjudication of items such as Form I–17 educational institution application and reinstatement, the system also provides value-added features that are useful to the school. For example, SEVIS provides ''ticklers'' and system alerts to the school, such as when a foreign student is issued a visa (once data share with DOS Consular Affairs is in effect), or when a nonimmigrant student enters through a port-of-entry (once data share with entry data is in effect). There are also system alerts for when a student is coming to the end of their program, as well as a selection of numerous reports available to the school user. Furthermore, the system provides a search engine functionality to enable direct queries based upon the SEVIS ID# from the Form I–20 issued by the school, as well as enhanced search capability to search by multiple parameters and data elements. SEVIS itself includes many self-help features for the end-user. Elements include an online tutorial, frequently asked questions, and system help and index.

This rule also increases the number of DSOs that a school is authorized from five to ten per school or campus. This increase in the number of SEVIS authorized DSOs is intended to provide schools with greater flexibility to address needs for personnel in the short or longer term for managing their international student programs and for properly reporting and updating records in SEVIS.

Another benefit and a Paperwork Reduction Act element is that SEVIS will eliminate the need for and use of the Form I–538 that formerly was used by schools to notify the Service in cases of the approval of an F–1 for extension or curricular practical training. The former process required a school to mail the Form I–538 to a Service contractor in London, KY for data entry. With SEVIS this notification can be made in real-time, through the update of the student's record in SEVIS. Ultimately, it is the intent of the Service and DOS to phase out the paper submission of all student and exchange visitor related forms in favor of completely electronic submissions, updates, and reporting.

4. Conclusion

The Service believes that the benefits of this rule far outweigh its costs. SEVIS will benefit both the approved schools and the Service by implementing an effective e-Gov system to replace what is currently a poorly performing paper-based reporting system. This rule improves and streamlines the reporting and recordkeeping of F, J, and M nonimmigrants and provides clear standards governing the maintenance, extension and reinstatement of student status. SEVIS also will be used as a tool for ensuring that F, J, and M nonimmigrant students are complying with their applicable regulatory requirements. This rule will provide the Service a means of determining whether nonimmigrant students and exchange visitors are currently enrolled in an approved course of study or exchange visitor program. Thus, SEVIS will serve as means of protecting both the public and national security. Therefore, the benefits of this rule outweigh any economic costs that will be incurred during its implementation and operation.

Executive Order 13132

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

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act

The Service is adding new electronic reporting requirements using SEVIS which is considered an information collection under the Paperwork Reduction Act. Accordingly, this information collection requirement has been approved by the Office of Management and Budget. The OMB control number for this information collection is 1115–0252.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements.

8 CFR Part 214

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

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

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

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS: AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.7 [Amended]

2. Section 103.7(b)(1) is amended by removing the entry for ''Form I–538'' from the listing of fees.

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

4. Section 214.1 is amended by adding a new paragraph (h) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(h) *Education privacy and F, J, and M nonimmigrants.* As authorized by section 641(c)(2) of Division C of Pub. L. 104–208, 8 U.S.C. 1372, and § 2.1(a) of this chapter, the Service has determined that, with respect to F and M nonimmigrant students and J nonimmigrant exchange visitors, waiving the provisions of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, is necessary for the proper implementation of 8 U.S.C. 1372. An educational agency or institution may not refuse to report information concerning an F or M nonimmigrant student or a J nonimmigrant exchange visitor that the educational agency or institution is required to report under 8 U.S.C. 1372 and § 214.3(g) (or any corresponding Department of State regulation concerning J nonimmigrants) on the basis of FERPA and any regulation implementing FERPA. The waiver of FERPA under this paragraph authorizes and requires an educational agency or institution to report information concerning an F, J or M nonimmigrant that would ordinarily be protected by FERPA, but only to the extent that 8 U.S.C. 1372 and § 214.3(g) (or any corresponding Department of State regulation concerning J nonimmigrants) requires the educational agency or institution to report information.

5. Section 214.2 is amended by:

a. Revising paragraph (f)(1)(i);

b. Adding new paragraphs (f)(1)(iii);

c. Revising paragraph (f)(3);

d. Revising paragraphs (f)(4)(i) and (ii);

e. Revising paragraph (f)(5)(i);

f. Revising paragraph (f)(5)(iv);

g. Revising paragraph (f)(6)(i) introductory text and paragraph (f)(6)(i)(E);

h. Adding paragraphs (f)(6)(i)(G) and (f)(6)(i)(H);

i. Revising paragraph (f)(6)(iii), and by adding a new paragraph (f)(6)(iv);

j. Revising paragraph (f)(7);

k. Revising paragraph (f)(8)(i) and adding paragraphs (f)(8)(ii)(A), (B), (C), and (D);

l. Adding two sentences to the end of paragraph (f)(9)(i);

m. Removing and reserving paragraphs (f)(9)(ii)(B) and (E);

n. Revising paragraphs (f)(9)(ii)(D), (f)(9)(ii)(F)(1), and (f)(9)(iii);

o. Revising paragraph (f)(10) introductory text;

p. Revising paragraph (f)(10)(i);

q. Revising paragraphs (f)(10)(ii)(A) and (B);

r. Revising the paragraph heading for paragraph (f)(10)(ii)(D);

s. Adding a new paragraph (f)(10)(ii)(E);

t. Revising paragraph (f)(11)(ii);

u. Revising paragraph (f)(12);

v. Revising paragraphs (f)(15) and (f)(16); and by

w. Adding a new paragraph (f)(17).

The additions and revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(1) * * *

(i) *Eligibility for admission.* A nonimmigrant student may be admitted into the United States in nonimmigrant status under section 101(a)(15)(F) of the Act, if:

(A) The student presents a SEVIS Form I–20 issued in his or her own name by a school approved by the Service for attendance by F–1 foreign students. (In the alternative, for a student seeking admission prior to August 1, 2003, the student may present a currently-valid Form I–20A–B/I–20ID, if that form was issued by the school prior to January 30, 2003);

(B) The student has documentary evidence of financial support in the amount indicated on the SEVIS Form I–20 (or the Form I–20A–B/I–20ID);

(C) For students seeking initial admission only, the student intends to attend the school specified in the student's visa (or, where the student is exempt from the requirement for a visa, the school indicated on the SEVIS Form I–20 (or the Form I–20A–B/I–20ID)); and

(D) In the case of a student who intends to study at a public secondary school, the student has demonstrated that he or she has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at the school for the period of the student's attendance.

* * * * *

(iii) *Use of SEVIS.* On January 30, 2003, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory for the issuance of any new Form I–20. A student or dependent who presents a non-SEVIS Form I–20 issued on or after January 30, 2003, will not be accepted for admission to the United States. Non-SEVIS Forms I–20 issued prior to

January 30, 2003, will continue to be acceptable until August 1, 2003. However, schools must issue a SEVIS Form I–20 to any current student requiring a reportable action (*e.g.*, extension of status, practical training, and requests for employment authorization) or a new Form I–20, or for any aliens who must obtain a new nonimmigrant student visa. As of August 1, 2003, the records of all current or continuing students must be entered in SEVIS.

* * * * *

(3) *Admission of the spouse and minor children of an F–1 student.* The spouse and minor children accompanying an F–1 student are eligible for admission in F–2 status if the student is admitted in F–1 status. The spouse and minor children following-to-join an F–1 student are eligible for admission to the United States in F–2 status if they are able to demonstrate that the F–1 student has been admitted and is, or will be within 30 days, enrolled in a full course of study, or engaged in approved practical training following completion of studies. In either case, at the time they seek admission, the eligible spouse and minor children of an F–1 student with a SEVIS Form I–20 must individually present an original SEVIS Form I–20 issued in the name of each F–2 dependent issued by a school authorized by the Service for attendance by F–1 foreign students. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an F–1 student in possession of a SEVIS Form I–20 to enter the United States using a copy of the F–1 student's SEVIS Form I–20. (In the alternative, for dependents seeking admission to the United States prior to August 1, 2003, a copy of the F–1 student's current Form I–20ID issued prior to January 30, 2003, with proper endorsement by the DSO will satisfy this requirement.) A new SEVIS Form I–20 (or Form I–20A–B) is required for a dependent where there has been any substantive change in the F–1 student's current information.

(4) * * *

(i) A current SEVIS Form I–20 (or, for readmission prior to August 1, 2003, a current Form I–20ID which was issued prior to January 30, 2003), properly endorsed by the DSO for reentry if there has been no substantive change to the most recent Form I–20 information; or

(ii) A new SEVIS Form I–20 (or, for readmission prior to August 1, 2003, a new Form I–20ID which was issued prior to January 30, 2003), if there has been a substantive change in the information on the student's most recent Form I–20 information, such as in the case of a student who has changed the major area of study, who intends to transfer to another Service approved institution or who has advanced to a higher level of study.

(5) * * *

(i) *General.* Except for border commuter students covered by the provisions of paragraph (f)(18) of this section, an F–1 student is admitted for duration of status. Duration of status is defined as the time during which an F–1 student is pursuing a full course of study at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies, except that an F–1 student who is admitted to attend a public high school is restricted to an aggregate of 12 months of study at any public high school(s). An F–1 student may be admitted for a period up to 30 days before the indicated report date or program start date listed on Form I–20. The student is considered to be maintaining status if he or she is making normal progress toward completing a course of study.

* * * * *

(iv) *Preparation for departure.* An F–1 student who has completed a course of study and any authorized practical training following completion of studies will be allowed an additional 60-day period to prepare for departure from the United States or to transfer in accordance with paragraph (f)(8) of this section. An F–1 student authorized by the DSO to withdraw from classes will be allowed a 15-day period for departure from the United States. However, an F–1 student who fails to maintain a full course of study without the approval of the DSO or otherwise fails to maintain status is not eligible for an additional period for departure.

* * * * *

(6) * * *

(i) *General.* Successful completion of the full course of study must lead to the attainment of a specific educational or professional objective. A course of study at an institution not approved for attendance by foreign students as provided in § 214.3(a)(3) does not satisfy this requirement. A ''full course of study'' as required by section 101(a)(15)(F)(i) of the Act means:

* * * * *

(E) Study in a curriculum at an approved private elementary or middle school or public or private academic high school which is certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation.

* * * * *

(G) For F–1 students enrolled in classes for credit or classroom hours, no more than the equivalent of one class or three credits per session, term, semester, trimester, or quarter may be counted toward the full course of study requirement if the class is taken on-line or through distance education and does not require the student's physical attendance for classes, examination or other purposes integral to completion of the class. An on-line or distance education course is a course that is offered principally through the use of television, audio, or computer transmission including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, or computer conferencing. If the F–1 student's course of study is in a language study program, no on-line or distance education classes may be considered to count toward a student's full course of study requirement.

(H) On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

* * * * *

(iii) *Reduced course load.* The designated school official may allow an F–1 student to engage in less than a full course of study as provided in this paragraph (f)(6)(iii). Except as otherwise noted, a reduced course load must consist of at least six semester or quarter hours, or half the clock hours required for a full course of study. A student who drops below a full course of study without the prior approval of the DSO will be considered out of status. On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

(A) *Academic difficulties.* The DSO may authorize a reduced course load on account of a student's initial difficulty with the English language or reading requirements, unfamiliarity with U.S. teaching methods, or improper course level placement. The student must resume a full course of study at the next available term, session, or semester, excluding a summer session, in order to maintain student status. A student previously authorized to drop below a full course of study due to academic difficulties is not eligible for a second authorization by the DSO due to academic difficulties while pursuing a

course of study at that program level. A student authorized to drop below a full course of study for academic difficulties while pursuing a course of study at a particular program level may still be authorized for a reduced course load due to an illness medical condition as provided for in paragraph (B) of this section.

(B) *Medical conditions.* The DSO may authorize a reduced course load (or, if necessary, no course load) due to a student's temporary illness or medical condition for a period of time not to exceed an aggregate of 12 months while the student is pursuing a course of study at a particular program level. In order to authorize a reduced course load based upon a medical condition, the student must provide medical documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist, to the DSO to substantiate the illness or medical condition. The student must provide current medical documentation and the DSO must reauthorize the drop below full course of study each new term, session, or semester. A student previously authorized to drop below a full course of study due to illness or medical condition for an aggregate of 12 months may not be authorized by a DSO to reduce his or her course load on subsequent occasions while pursuing a course of study at the same program level. A student may be authorized to reduce course load for a reason of illness or medical condition on more than one occasion while pursuing a course of study, so long as the aggregate period of that authorization does not exceed 12 months.

(C) *Completion of course of study.* The DSO may authorize a reduced course load in the student's final term, semester, or session if fewer courses are needed to complete the course of study. If the student is not required to take any additional courses to satisfy the requirements for completion, but continues to be enrolled for administrative purposes, the student is considered to have completed the course of study and must take action to maintain status. Such action may include application for change of status or departure from the U.S.

(D) *Reporting requirements for non-SEVIS schools.* A DSO must report to the Service any student who is authorized to reduce his or her course load. Within 21 days of the authorization, the DSO must send a photocopy of the student's current Form I–20ID along with Form I–538 to Service's data processing center indicating the date and reason that the student was authorized to drop below full time status. Similarly, the DSO will report to the Service no more than 21 days after the student has resumed a full course of study by submitting a current copy of the students' Form I–20ID to the Service's data processing center indicating the date a full course of study was resumed and the new program end date with Form I–538, if applicable.

(E) *SEVIS reporting requirements.* In order for a student to be authorized to drop below a full course of study, the DSO must update SEVIS prior to the student reducing his or her course load. The DSO must update SEVIS with the date, reason for authorization, and the start date of the next term or session. The DSO must also notify SEVIS within 21 days of the student's commencement of a full course of study. If an extension of the program end date is required due to the drop below a full course of study, the DSO must update SEVIS by completing a new SEVIS Form I–20 with the new program end date in accordance with paragraph (f)(7) of this section.

(iv) *Concurrent enrollment.* An F–1 student may be enrolled in two different Service-approved schools at one time as long as the combined enrollment amounts to a full time course of study. In cases where a student is concurrently enrolled, the school from which the student will earn his or her degree or certification should issue the Form I–20, and conduct subsequent certifications and updates to the Form I–20. The DSO from this school is also responsible for all of the reporting requirements to the Service. In instances where a student is enrolled in programs with different full course of study requirements (*e.g.*, clock hours vs. credit hours), the DSO is permitted to determine what constitutes a full time course of study.

(7) *Extension of stay.*—

(i) *General.* An F–1 student who is admitted for duration of status is not required to apply for extension of stay as long as the student is maintaining status and making normal progress toward completion of his or her educational objective. An F–1 student who is currently maintaining status and making normal progress toward completing his or her educational objective, but who is unable to complete his or her course of study by the program end date on the Form I–20, must apply prior to the program end date for a program extension pursuant to paragraph (f)(7)(iii) of this section.

(ii) *Report date and program completion date on Form I–20.* When determining the report date on the Form I–20, the DSO may choose a reasonable date to accommodate a student's need to be in attendance for required activities at the school prior to the actual start of classes. Such required activities may include, but are not limited to, research projects and orientation sessions. However, for purposes of employment, the DSO may not indicate a report date more than 30 days prior to the start of classes. When determining the program completion date on Form I–20, the DSO should make a reasonable estimate based upon the time an average student would need to complete a similar program in the same discipline.

(iii) *Program extension for students in lawful status.* An F–1 student who is unable to meet the program completion date on the Form I–20 may be granted an extension by the DSO if the DSO certifies that the student has continually maintained status and that the delays are caused by compelling academic or medical reasons, such as changes of major or research topics, unexpected research problems, or documented illnesses. Delays caused by academic probation or suspension are not acceptable reasons for program extensions. A DSO may not grant an extension if the student did not apply for an extension until after the program end date noted on the Form I–20. An F–1 student who is unable to complete the educational program within the time listed on Form I–20 and who is ineligible for program extension pursuant to this paragraph (f)(7) is considered out of status. If eligible, the student may apply for reinstatement under the provisions of paragraph (f)(16) of this section.

(iv) *Notification.* Upon granting a program extension, a DSO at a non-SEVIS school must immediately submit notification to the Service's data processing center using Form I–538 and the top page of Form I–20A–B showing the new program completion date. For a school enrolled in SEVIS, a DSO may grant a program extension only by updating SEVIS and issuing a new Form I–20 reflecting the current program end date. A DSO may grant an extension any time prior to the program end date listed on the student's original Form I–20.

(8) * * *

(i) A student who is maintaining status may transfer to another Service approved school by following the notification procedure prescribed in paragraph (f)(8)(ii) of this section. However, an F–1 student is not permitted to remain in the United States when transferring between schools or programs unless the student will begin classes at the transfer school or program within 5 months of transferring out of the current school or within 5 months of the program completion date on his or her current Form I–20, whichever is

earlier. In the case of an F–1 student authorized to engage in post-completion optional practical training (OPT), the student must be able resume classes within 5 months of transferring out of the school that recommended OPT or the date the OPT authorization ends, whichever is earlier. An F–1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school transfer and must apply for reinstatement under the provisions of paragraph (f)(16) of this section, or, in the alternative, may depart the country and return as an initial entry in a new F–1 nonimmigrant status.

(ii) * * *

(A) *Non-SEVIS School to Non-SEVIS school.* To transfer from one non-SEVIS school to a different non-SEVIS school, the student must first notify the school he or she is attending of the intent to transfer, then obtain a Form I–20 issued in accordance with the provisions of 8 CFR 214.3(k) from the school to which he or she intends to transfer. Prior to issuance of any Form I–20, the DSO at the transfer school is responsible for determining that the student has been maintaining status at his or her current school and is eligible for transfer to the new school. The transfer will be effected only if the student completes the Student Certification portion of the Form I–20 and returns the form to a DSO of the transfer school within 15 days of the program start date listed on Form I–20. Upon receipt of the student's Form I–20 the DSO must note ''transfer completed on (date)'' in the space provided for the DSO's remarks, thereby acknowledging the student's attendance at the transfer school; return the Form I–20 to the student; submit the School copy of the Form I–20 to Service's Data Processing Center within 30 days of receipt from the student; and forward a photocopy of the school copy to the school from which the student transferred.

(B) *Non-SEVIS school to SEVIS school.* To transfer from a non-SEVIS school to a SEVIS school, the student must first notify the school he or she is attending of the intent to transfer, then obtain a SEVIS Form I–20 issued in accordance with the provisions of 8 CFR 214.3(k) from the school to which he or she intends to transfer. Prior to issuance of any Form I–20, the DSO at the transfer school is responsible for determining that the student has been maintaining status at his or her current school and is eligible for transfer to the new school. Once the transfer school has issued the SEVIS Form I–20 to the student indicating a transfer, the transfer school becomes responsible for updating and maintaining the student's record in SEVIS. The student is then required to notify the DSO at the transfer school within 15 days of the program start date listed on SEVIS Form I–20. Upon notification that the student is enrolled in classes, the DSO of the transfer school must update SEVIS to reflect the student's registration and current address, thereby acknowledging that the student has completed the transfer process. In the remarks section of the student's SEVIS Form I–20, the DSO must note that the transfer has been completed, including the date, and return the form to the student. The transfer is effected when the transfer school updates SEVIS indicating that the student has registered in classes within the 30 days required by § 214.3(g)(3)(iii).

(C) *SEVIS school to SEVIS school.* To transfer from a SEVIS school to a SEVIS school the student must first notify his or her current school of the intent to transfer and must indicate the school to which he or she intends to transfer. Upon notification by the student, the current school will update the student's record in SEVIS as a ''transfer out'' and indicate the school to which the student intends to transfer, and a release date. The release date will be the current semester or session completion date, or the date of expected transfer if earlier than the established academic cycle. The current school will retain control over the student's record in SEVIS until the student completes the current term or reaches the release date. At the request of the student, the DSO of the current school may cancel the transfer request at any time prior to the release date. As of the release date specified by the current DSO, the transfer school will be granted full access to the student's SEVIS record and then becomes responsible for that student. The current school conveys authority and responsibility over that student to the transfer school, and will no longer have full SEVIS access to that student's record. As such, a transfer request may not be cancelled by the current DSO after the release date has been reached. After the release date, the transfer DSO must complete the transfer of the student's record in SEVIS and may issue a SEVIS Form I–20. The student is then required to contact the DSO at the transfer school within 15 days of the program start date listed on the SEVIS Form I–20. Upon notification that the student is enrolled in classes, the DSO of the transfer school must update SEVIS to reflect the student's registration and current address, thereby acknowledging that the student has completed the transfer process. In the remarks section of the student's SEVIS Form I–20, the DSO must note that the transfer has been completed, including the date, and return the form to the student. The transfer is effected when the transfer school notifies SEVIS that the student has enrolled in classes in accordance with the 30 days required by § 214.3(g)(3)(iii).

(D) *SEVIS school to non-SEVIS school.* To transfer from a SEVIS school to a non-SEVIS school, the student must first notify his or her current school of the intent to transfer and must indicate the school to which he or she intends to transfer. Upon notification by the student, the current school will update the student's status in SEVIS as ''a transfer out'', enter a ''release'' or expected transfer date, and update the transfer school as ''non-SEVIS.'' The student must then notify the school to which the he or she intends to transfer of his or her intent to enroll. After the student has completed his or her current term or session, or has reached the expected transfer date, the DSO at the current school will no longer have full access to the student's SEVIS record. At this point, if the student has notified the transfer school of his or her intent to transfer, and the transfer school has determined that the student has been maintaining status at his or her current school, the transfer school may issue the student a Form I–20. The transfer will be effected only if the student completes the Student Certification portion of the Form I–20 and returns the form to a designated school official of the transfer school within 15 days of the program start date listed on Form I–20. Upon receipt of the student's Form I–20 the DSO must do as follows: note ''transfer completed on (date)'' in the space provided for the DSO's remarks, thereby acknowledging the student's attendance; return the Form I–20 to the student; submit the school copy of the Form I–20 to the Service's data processing center within 30 days of receipt from the student; and forward a photocopy of the school copy to the school from which the student transferred.

* * * * *

(9) * * *

(i) * * * In the case of a transfer in SEVIS, the student may only engage in on-campus employment at the school having jurisdiction over the student's SEVIS record. Upon initial entry to begin a new course of study, an F–1 student may not begin on-campus employment more than 30 days prior to the actual start of classes.

(ii) * * *

(B) Reserved.

* * * * *

(D) *Procedure for off-campus employment authorization due to severe economic hardship.* The student must request a recommendation from the DSO for off-campus employment. The DSO at a non-SEVIS school must make such a certification on Form I–538, Certification by Designated School Official. The DSO of a SEVIS school must complete such certification in SEVIS. The DSO may recommend the student for work off-campus for one year intervals by certifying that:

(*1*) The student has been in F–1 status for one full academic year;

(*2*) The student is in good standing as a student and is carrying a full course of study as defined in paragraph (f)(6) of this section;

(*3*) The student has demonstrated that acceptance of employment will not interfere with the student's carrying a full course of study; and

(*4*) The student has demonstrated that the employment is necessary to avoid severe economic hardship due to unforeseen circumstances beyond the student's control pursuant to paragraph (f)(9)(ii)(C) of this section and has demonstrated that employment under paragraph (f)(9)(i) of this section is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

(E) Reserved.

(F) * * *

(*1*) The applicant should submit the economic hardship application for employment authorization on Form I–765, with the fee required by 8 CFR 103.7(b)(1), to the service center having jurisdiction over his or her place of residence. Applicants at a non-SEVIS school should submit Form I–20, Form I–538, and any other supporting materials such as affidavits which further detail the unforeseen circumstances that require the student to seek employment authorization and the unavailability or insufficiency of employment under paragraph (f)(9)(i) of this section. Students enrolled in a SEVIS school should submit the SEVIS Form I–20 with the employment page demonstrating the DSO's comments and certification.

* * * * *

(iii) *Internship with an international organization.* A bona fide F–1 student who has been offered employment by a recognized international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) must apply for employment authorization to the service center having jurisdiction over his or her place of residence. A student seeking employment authorization under this provision is required to present a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship, Form I–20 ID or SEVIS Form I–20 with employment page completed by DSO certifying eligibility for employment, and a completed Form I–765, with required fee as contained in § 103.7(b)(1) of this chapter.

(10) *Practical training.* Practical training may be authorized to an F–1 student who has been lawfully enrolled on a full time basis, in a Service-approved college, university, conservatory, or seminary for one full academic year. This provision also includes students who, during their course of study, were enrolled in a study abroad program, if the student had spent at least one full academic term enrolled in a full course of study in the United States prior to studying abroad. A student may be authorized 12 months of practical training, and becomes eligible for another 12 months of practical training when he or she changes to a higher educational level. Students in English language training programs are ineligible for practical training. An eligible student may request employment authorization for practical training in a position that is directly related to his or her major area of study. There are two types of practical training available:

(i) *Curricular practical training.* An F–1 student may be authorized by the DSO to participate in a curricular practical training program that is an integral part of an established curriculum. Curricular practical training is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school. Students who have received one year or more of full time curricular practical training are ineligible for post-completion academic training. Exceptions to the one academic year requirement are provided for students enrolled in graduate studies that require immediate participation in curricular practical training. A request for authorization for curricular practical training must be made to the DSO. A student may begin curricular practical training only after receiving his or her Form I–20 with the DSO endorsement.

(A) *Non-SEVIS process.* A student must request authorization for curricular practical training using Form I–538. Upon approving the request for authorization, the DSO shall: certify Form I–538 and send the form to the Service's data processing center; endorse the student's Form I–20 ID with ''full-time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)''; and sign and date the Form I–20ID before returning it to the student.

(B) *SEVIS process.* To grant authorization for a student to engage in curricular practical training, a DSO at a SEVIS school will update the student's record in SEVIS as being authorized for curricular practical training that is directly related to the student's major area of study. The DSO will indicate whether the training is full-time or part-time, the employer and location, and the employment start and end date. The DSO will then print a copy of the employment page of the SEVIS Form I–20 indicating that curricular practical training has been approved. The DSO must sign, date, and return the SEVIS Form I–20 to the student prior to the student's commencement of employment.

(ii) * * *

(A) *General.* A student may apply to the Service for authorization for temporary employment for optional practical training directly related to the student's major area of study. The student may not begin optional practical training until the date indicated on his or her employment authorization document, Form I–766 or Form 688B. A student may submit an application for authorization to engage in optional practical training up to 90 days prior to being enrolled for one full academic year, provided that the period of employment will not begin until after the completion of the full academic year as indicated by the DSO. A student may be granted authorization to engage in temporary employment for optional practical training:

(*1*) During the student's annual vacation and at other times when school is not in session, if the student is currently enrolled, and is eligible for registration and intends to register for the next term or session;

(*2*) While school is in session, provided that practical training does not exceed 20 hours a week while school is in session; or

(*3*) After completion of the course of study, or, for a student in a bachelor's, master's, or doctoral degree program, after completion of all course requirements for the degree (excluding thesis or equivalent). Continued enrollment, for the school's administrative purposes, after all requirements for the degree have been met does not preclude eligibility for optional practical training. However,

optional practical training must be requested prior to the completion of all course requirements for the degree or prior to the completion of the course of study. A student must complete all practical training within a 14-month period following the completion of study.

(B) *Termination of practical training.* Authorization to engage in optional practical training employment is automatically terminated when the student transfers to another school or begins study at another educational level.

* * * * *

(D) *Action of the DSO-Non SEVIS schools.* * * *

(E) *SEVIS process.* In making a recommendation for optional practical training under SEVIS, the DSO will update the student's record in SEVIS as having been recommended for optional practical training. A DSO who recommends a student for optional practical training is responsible for maintaining the record of the student for the duration of the time that training is authorized. The DSO will indicate in SEVIS whether the employment is to be full-time or part-time, and note in SEVIS the start and end date of employment. The DSO will then print the employment page of the student's SEVIS Form I–20, and sign and date the form to indicate that optional practical training has been recommended. The student must file with the service center for an Employment Authorization Document, on Form I–765, with fee and the SEVIS Form I–20 employment page indicating that optional practical training has been recommended by the DSO.

(11) * * *

(ii) A DSO's recommendation for optional practical training on Form I–20ID, or, for a SEVIS school, on an updated SEVIS Form I–20.

(12) *Decision on application for employment authorization.* The Service shall adjudicate the Form I–765 and issue an EAD on the basis of the DSO's recommendation unless the student is found otherwise ineligible. The Service shall notify the applicant of the decision and, if the application is denied, of the reason or reasons for the denial. The applicant may not appeal the decision. An F–1 student authorized by the Service to engage in practical training is required to report any change of name or address, or interruption of such employment to the DSO for the duration of the authorized training. A DSO who recommends a student for optional practical training is responsible for updating the student's record to reflect these reported changes for the duration of the time that training is authorized.

* * * * *

(15) *Spouse and children of F–1 student.* The F–2 spouse and minor children of an F–1 student shall each be issued an individual SEVIS Form I–20 in accordance with the provisions of § 214.3(k).

(i) *Employment.* The F–2 spouse and children of an F–1 student may not accept employment.

(ii) *Study.* (A) The F–2 spouse of an F–1 student may not engage in full time study, and the F–2 child may only engage in full time study if the study is in an elementary or secondary school (kindergarten through twelfth grade). The F–2 spouse and child may engage in study that is avocational or recreational in nature.

(B) An F–2 spouse or F–2 child desiring to engage in full time study, other than that allowed for a child in paragraph (f)(15)(ii)(A) of this section, must apply for and obtain a change of nonimmigrant classification to F–1, J–1, or M–1 status. An F–2 spouse or child who was enrolled on a full time basis prior to January 1, 2003, will be allowed to continue study but must file for a change of nonimmigrant classification to F–1, J–1, or M–1 status on or before March 11, 2003.

(C) An F–2 spouse or F–2 child violates his or her nonimmigrant status by engaging in full time study except as provided in paragraph (f)(15)(ii)(A) or (B) of this section.

(16) *Reinstatement to student status.*—

(i) *General.* The district director may consider reinstating a student who makes a request for reinstatement on Form I–539, Application to Extend/Change Nonimmigrant Status, accompanied by a properly completed SEVIS Form I–20 indicating the DSO's recommendation for reinstatement (or a properly completed Form I–20A-B issued prior to January 30, 2003, from the school the student is attending or intends to attend prior to August 1, 2003). The district director may consider granting the request if the student:

(A) Has not been out of status for more than 5 months at the time of filing the request for reinstatement (or demonstrates that the failure to file within the 5 month period was the result of exceptional circumstances and that the student filed the request for reinstatement as promptly as possible under these exceptional circumstances);

(B) Does not have a record of repeated or willful violations of Service regulations;

(C) Is currently pursuing, or intending to pursue, a full course of study in the immediate future at the school which issued the Form I–20;

(D) Has not engaged in unauthorized employment;

(E) Is not deportable on any ground other than section 237(a)(1)(B) or (C)(i) of the Act; and

(F) Establishes to the satisfaction of the Service, by a detailed showing, either that:

(*1*) The violation of status resulted from circumstances beyond the student's control. Such circumstances might include serious injury or illness, closure of the institution, a natural disaster, or inadvertence, oversight, or neglect on the part of the DSO, but do not include instances where a pattern of repeated violations or where a willful failure on the part of the student resulted in the need for reinstatement; or

(*2*) The violation relates to a reduction in the student's course load that would have been within a DSO's power to authorize, and that failure to approve reinstatement would result in extreme hardship to the student.

(ii) *Decision.* If the Service reinstates the student, the Service shall endorse the student's copy of Form I–20 to indicate the student has been reinstated and return the form to the student. If the Form I–20 is from a non-SEVIS school, the school copy will be forwarded to the school. If the Form I–20 is from a SEVIS school, the adjudicating officer will update SEVIS to reflect the Service's decision. In either case, if the Service does not reinstate the student, the student may not appeal that decision.

(17) *Current name and address.* A student must inform the DSO and the Service of any legal changes to his or her name or of any change of address, within 10 days of the change, in a manner prescribed by the school. A student enrolled at a SEVIS school can satisfy the requirement in 8 CFR 265.1 of notifying the Service by providing a notice of a change of address within 10 days to the DSO, who in turn shall enter the information in SEVIS within 21 days of notification by the student. A student enrolled at a non-SEVIS school must submit a notice of change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. Except in the case of a student who cannot receive mail where he or she resides, the address provided by the student must be the actual physical location where the student resides rather than a mailing address. In cases where a student provides a mailing address, the school must maintain a record of, and must provide upon request from the Service,

the actual physical location where the student resides.

* * * * *

§ 214.2 [Amended]

5. Section 214.2 is further amended by revising the term ''IAP–66'' to read ''DS–2019'' wherever that term appears in the following paragraphs:

Paragraph (j)(1)(iv)
Paragraph (j)(2)
Paragraph (j)(3)
Paragraph (j)(4)(i).

6. Section 214.2 is further amended by revising paragraphs (j)(1)(i) and (ii), and by adding new paragraphs (j)(1)(vii) and (j)(1)(viii) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(j) * * *

(1) *General*—(i) *Eligibility for admission.* A nonimmigrant exchange visitor and his or her accompanying spouse and minor children may be admitted into the United States in J–1 and J–2 classifications under section 101(a)(15)(J) of the Act, if the exchange visitor and his or her accompanying spouse and children each presents a SEVIS Form DS–2019 issued in his or her own name by a program approved by the Department of State for participation by J–1 exchange visitors. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an exchange visitor possessing a SEVIS Form DS–2019 to enter the United States using a copy of the exchange visitor's SEVIS Form DS–2019. However, where the exchange visitor presents a properly completed Form DS–2019, Certificate of Eligibility for Exchange Visitor (J–1) Status, which was issued to the J–1 exchange visitor by a program approved by the Department of State for participation by exchange visitors and which remains valid for the admission of the exchange visitor, the accompanying spouse and children may be admitted on the basis of the J–1's non-SEVIS Form DS–2019.

(ii) *Admission period.* An exchange alien, and J–2 spouse and children, may be admitted for a period up to 30 days before the report date or start of the approved program listed on Form DS–2019. The initial admission of an exchange visitor, spouse and children may not exceed the period specified on Form DS–2019, plus a period of 30 days for the purposes of travel or for the period designated by the Commissioner as provided in paragraph (j)(1)(vi) of this section. Regulations of the Department of State published at 22 CFR part 62 give general limitations on the stay of the various classes of exchange visitors. A spouse or child may not be admitted for longer than the principal exchange visitor.

* * * * *

(vii) *Use of SEVIS.* At a date to be established by the Department of State, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory for designated program sponsors. After that date, which will be announced by publication in the **Federal Register**, all designated program sponsors must begin issuance of the SEVIS Form DS–2019.

(viii) *Current name and address.* A J–1 exchange visitor must inform the Service and the responsible officer of the exchange visitor program of any legal changes to his or her name or of any change of address, within 10 days of the change, in a manner prescribed by the program sponsor. A J–1 exchange visitor enrolled in a SEVIS program can satisfy the requirement in 8 CFR 265.1 of notifying the Service by providing a notice of a change of address within 10 days to the responsible officer, who in turn shall enter the information in SEVIS within 21 days of notification by the exchange visitor. A J–1 exchange visitor enrolled at a non-SEVIS program must submit a change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. Except in the case of an exchange visitor who cannot receive mail where he or she resides, the address provided by the exchange visitor must be the actual physical location where the exchange visitor resides rather than a mailing address. In cases where an exchange visitor provides a mailing address, the exchange visitor program must maintain a record of, and must provide upon request from the Service, the actual physical location where the exchange visitor resides.

* * * * *

7. Section 214.2 is further amended by:

a. Revising paragraph (m)(1)(i);
b. Adding new paragraphs (m)(1)(iii);
c. Revising the paragraph heading and the introductory text in paragraph (m)(3);
d. Revising paragraph (m)(5);
e. Removing and reserving paragraphs (m)(6), (m)(7), and (m)(8);
f. Adding new paragraphs (m)(9)(v) and (vi);
g. Revising paragraphs (m)(10), (m)(11)(ii), (m)(13), and (m)(14)(ii) introductory text;
h. Adding a new paragraph (m)(14)(vi);
i. Revising paragraph (m)(16);
j. Revising paragraph (m)(17); and by
k. Adding new paragraph (m)(18).

The additions and revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(m) * * *

(1) *Admission of student.* (i) *Eligibility for admission.* A nonimmigrant student may be admitted into the United States in nonimmigrant status under section 101(a)(15)(M) of the Act, if:

(A) The student presents a SEVIS Form I–20 issued in his or her own name by a school approved by the Service for attendance by M–1 foreign students. (In the alternative, for a student seeking admission prior to August 1, 2003, the student may present a currently-valid Form I–20M–N/I–20ID, if that form was issued by the school prior to January 30, 2003);

(B) The student has documentary evidence of financial support in the amount indicated on the SEVIS Form I–20 (or the Form I–20M–N/I–20ID); and

(C) For students seeking initial admission only, the student intends to attend the school specified in the student's visa (or, where the student is exempt from the requirement for a visa, the school indicated on the SEVIS Form I–20 (or the Form I–20M–N/I–20ID)).

* * * * *

(iii) *Use of SEVIS.* On January 30, 2003, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory for the issuance of any new Form I–20. A student or dependent who presents a non-SEVIS Form I–20 issued on or after January 30, 2003, will not be accepted for admission to the United States. Non-SEVIS Forms I–20 issued prior to January 30, 2003, will continue to be accepted for admission to the United States until August 1, 2003. However, schools must issue a SEVIS Form I–20 to any current student requiring a reportable action (*e.g.*, extension of status, practical training, and requests for employment authorization) or a new Form I–20, or for any aliens who must obtain a new nonimmigrant student visa. As of August 1, 2003, the records of all current or continuing students must be entered in SEVIS.

* * * * *

(3) *Admission of the spouse and minor children of an M–1 student.* The spouse and minor children accompanying an M–1 student are eligible for admission in M–2 status if the student is admitted in M–1 status. The spouse and minor children following-to-join an M–1 student are

eligible for admission to the United States in M–2 status if they are able to demonstrate that the M–1 student has been admitted and is, or will be within 30 days, enrolled in a full course of study, or engaged in approved practical training following completion of studies. In either case, at the time they seek admission, the eligible spouse and minor children of an M–1 student with a SEVIS Form I–20 must individually present an original SEVIS Form I–20 issued in the name of each M–2 dependent issued by a school authorized by the Service for attendance by M–1 foreign students. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an M–1 student in possession of a SEVIS Form I–20 to enter the United States using a copy of the M–1 student's SEVIS Form I–20. (In the alternative, for dependents seeking admission to the United States prior to August 1, 2003, a copy of the M–1 student's current Form I–20ID issued prior to January 30, 2003, with proper endorsement by the DSO will satisfy this requirement.) A new SEVIS Form I–20 (or Form I–20M–N) is required for a dependent where there has been any substantive change in the M–1 student's current information.

* * * * *

(5) *Period of stay*. A student in M nonimmigrant status is admitted for a fixed time period, which is the period necessary to complete the course of study indicated on the Form I–20, plus practical training following completion of the course of study, plus an additional 30 days to depart the United States, but not to exceed a total period of one year. An M–1 student may be admitted for a period up to 30 days before the report date or start date of the course of study listed on the Form I–20. An M–1 student who fails to maintain a full course of study or otherwise fails to maintain status is not eligible for the additional 30-day period of stay.

(6) [Reserved]

(7) [Reserved]

(8) [Reserved]

(9) * * *

(v) *On-line courses/distance education programs*. No on-line or distance education classes may be considered to count toward an M–1 student's full course of study requirement if such classes do not require the student's physical attendance for classes, examination or other purposes integral to completion of the class. An on-line or distance education course is a course that is offered principally through the use of television, audio, or computer transmission including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, or computer conferencing.

(vi) *Reduced course load*. The designated school official may authorize an M–1 student to engage in less than a full course of study only where the student has been compelled by illness or a medical condition that has been documented by a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist, to interrupt or reduce his or her course of study. A DSO may not authorize a reduced course load for more than an aggregate of 5 months per course of study. An M–1 student previously authorized to drop below a full course of study due to illness or medical condition for an aggregate of 5 months, may not be authorized by the DSO to reduce his or her course load on subsequent occasions during his or her particular course of study.

(A) *Non-SEVIS schools*. A DSO must report any student who has been authorized by the DSO to carry a reduced course load. Within 21 days of the authorization, the DSO must send a photocopy of the student's Form I–20 to the Service's data processing center indicating the date that authorization was granted. The DSO must also report to the Service's data processing center when the student has resumed a full course of study, no more than 21 days from the date the student resumed a full course of study. In this case, the DSO must submit a photocopy of the student's Form I–20 indicating the date that a full course of study was resumed, with a new program end date.

(B) *SEVIS reporting*. In order for a student to be authorized to drop below a full course of study, the DSO must update SEVIS prior to the student reducing his or her course load. The DSO must update SEVIS with the date, reason for authorization, and the start date of the next term or session. The DSO must also notify SEVIS within 21 days of the student's commencement of a full course of study.

(10) *Extension of stay*.

(i) *Eligibility*. The cumulative time of extensions that can be granted to an M–1 student is limited to a period of 3 years from the M–1 student's original start date, plus 30 days. No extension can be granted to an M–1 student if the M–1 student is unable to complete the course of study within 3 years of the original program start date. This limit includes extensions that have been granted due to a drop below full course of study, a transfer of schools, or reinstatement. An M–1 student may be granted an extension of stay if it is established that:

(A) He or she is a bona fide nonimmigrant currently maintaining student status;

(B) Compelling educational or medical reasons have resulted in a delay to his or her course of study. Delays caused by academic probation or suspension are not acceptable reasons for program extension; and

(C) He or she is able to, and in good faith intends to, continue to maintain that status for the period for which the extension is granted.

(ii) *Application*. A student must apply to the Service for an extension on Form I–539, Application to Extend/Change Nonimmigrant Status. A student's M–2 spouse and children seeking an extension of stay must be included in the application. The student must submit the application to the service center having jurisdiction over the school the student is currently authorized to attend, at least 15 days but not more than 60 days before the program end date on the student's Form I–20. The application must also be accompanied by the student's Form I–20 and the Forms I–94 of the student's spouse and children, if applicable.

(iii) *Period of stay*. If an application for extension is granted, the student and the student's spouse and children, if applicable, are to be given an extension of stay for the period of time necessary to complete the course of study, plus 30 days within which to depart from the United States, or for a total period of one year, whichever is less. A student's M–2 spouse and children are not eligible for an extension unless the M–1 student is granted an extension of stay, or for a longer period than is granted to the M–1 student.

(iv) *SEVIS update*. A DSO must update SEVIS to recommend that a student be approved for an extension of stay. The SEVIS Form I–20 must be printed with the recommendation and new program end date for submission by mail to the service center, with Form I–539, and Forms I–94 if applicable.

(11) * * *

(ii) *Procedure*. A student must apply to the Service on Form I–539 for permission to transfer between schools. Upon application for school transfer, a student may effect the transfer subject to approval of the application. A student who transfers without complying with this requirement or whose application is denied after transfer pursuant to this regulation is considered to be out of status. If the application is approved, the approval of the transfer will be determined to be the program start date listed on the Form I–20, and the student

will be granted an extension of stay for the period of time necessary to complete the new course of study plus 30 days, or for a total period of one year, whichever is less.

(A) *Non-SEVIS school.* The application must be accompanied by the Form I–20ID copy and the Form I–94 of the student's spouse and children, if applicable. The Form I–539 must also be accompanied by Form I–20M–N properly and completely filled out by the student and by the designated official of the school which the student wishes to attend. The student must submit the application for school transfer to the service center having jurisdiction over the school the student is currently authorized to attend. Upon approval, the adjudicating officer will endorse the name of the school to which the transfer is authorized on the student's Form I–20ID copy and return it to the student. The officer will also endorse Form I–20M–N to indicate that a school transfer has been authorized and forward it to the Service's processing center for updating. The processing center will forward Form I–20M–N to the school to which the transfer has been authorized to notify the school of the action taken.

(B) *SEVIS school.* The student must first notify his or her current school of the intent to transfer and indicate the school to which the student intends to transfer. Upon notification by the student, the current school must update SEVIS to show the student as a ''transfer out'' and input the ''release date'' for transfer. Once updated as a ''transfer out'' the transfer school is permitted to generate a SEVIS Form I–20 for transfer but will not gain access to the student's SEVIS record until the release date is reached. Upon receipt of the SEVIS Form I–20 from the transfer school, the student must submit Form I–539 in accordance with § 214.2(m)(11) to the service center with jurisdiction over the current school. The student may enroll in the transfer school at the next available term or session and is required to notify the DSO of the transfer school immediately upon beginning attendance. The transfer school must update the student's registration record in SEVIS in accordance with § 214.3(g)(3). Upon approval of the transfer application, the Service officer will endorse the name of the school to which the transfer is authorized on the student's SEVIS Form I–20 and return it to the student.

(C) *Transition process.* Once SEVIS is fully operational and interfaced with the service center benefit processing system, the Service officer will transmit the approval of the transfer to SEVIS and endorse the name of the school to which transfer is authorized on the student's SEVIS Form I–20 and return it to the student. As part of a transitional process until that time, the student is required to notify the DSO at the transfer school of the decision of the Service within 15 days of the receipt of the adjudication by the Service. Upon notification by the student of the approval of the Service, the DSO must immediately update SEVIS to show that approval of the transfer has been granted. The DSO must then print an updated SEVIS Form I–20 for the student indicating that the transfer has been completed. If the application for transfer is denied, the student is out of status and the DSO must terminate the student's record in SEVIS.

* * * * *

(13) *Employment.* Except as provided in paragraph (m)(14) of this section, a student may not accept employment.

(14) * * *

(ii) *Application.* A M–1 student must apply for permission to accept employment for practical training on Form I–765, with fee as contained in 8 CFR 103.7(b)(1), accompanied by a Form I–20 that has been endorsed for practical training by the designated school official. The application must be submitted prior to the program end date listed on the student's Form I–20 but not more than 90 days before the program end date. The designated school official must certify on Form I–538 that—

* * * * *

(vi) *SEVIS process.* The DSO must update the student's record in SEVIS to recommend that the Service approve the student for practical training, and print SEVIS Form I–20 with the recommendation, for the student to submit to the Service with Form I–765 as provided in this paragraph (m)(14).

* * * * *

(16) *Reinstatement to student status.*

(i) *General.* A district director may consider reinstating a student who makes a request for reinstatement on Form I–539, Application to Extend/Change Nonimmigrant Status, accompanied by a properly completed SEVIS Form I–20 indicating the DSO's recommendation for reinstatement (or a properly completed Form I–20M–N issued prior to January 30, 2003, from the school the student is attending or intends to attend prior to August 1, 2003). The district director may consider granting the request only if the student:

(A) Has not been out of status for more than 5 months at the time of filing the request for reinstatement (or demonstrates that the failure to file within the 5 month period was the result of exceptional circumstances and that the student filed the request for reinstatement as promptly as possible under these exceptional circumstances);

(B) Does not have a record of repeated or willful violations of the Service regulations;

(C) Is currently pursuing, or intends to pursue, a full course of study at the school which issued the Form I–20M–N or SEVIS Form I–20;

(D) Has not engaged in unlawful employment;

(E) Is not deportable on any ground other than section 237(a)(1)(B) or (C)(i) of the Act; and

(F) Establishes to the satisfaction of the Service, by a detailed showing, either that:

(*1*) The violation of status resulted from circumstances beyond the student's control. Such circumstances might include serious injury or illness, closure of the institution, a natural disaster, or inadvertence, oversight or neglect on the part of the DSO, but do not include instances where a pattern of repeated violations or where a willful failure on the part of the student resulted in the need for reinstatement; or

(*2*) The violation relates to a reduction in the student's course load that would have been within a DSO's power to authorize, and that failure to approve reinstatement would result in extreme hardship to the student.

(ii) *Decision.* If the Service reinstates the student, the Service shall endorse the student's copy of Form I–20 to indicate that the student has been reinstated and return the form to the student. If the Form I–20 is from a non-SEVIS school, the school copy will be forwarded to the school. If the Form I–20 is from a SEVIS school, the adjudicating officer will update SEVIS to reflect the Service's decision. In either case, if the Service does not reinstate the student, the student may not appeal the decision. The district director will send notification to the school of the decision.

(17) *Spouse and children of M–1 student.* The M–2 spouse and minor children of an M–1 student shall each be issued an individual SEVIS Form I–20 in accordance with the provisions of § 214.3(k).

(i) *Employment.* The M–2 spouse and children may not accept employment.

(ii) *Study.* (A) The M–2 spouse may not engage in full time study, and the M–2 child may only engage in full time study if the study is in an elementary or secondary school (kindergarten through twelfth grade). The M–2 spouse and

child may engage in study that is avocational or recreational in nature.

(B) An M–2 spouse or M–2 child desiring to engage in full time study, other than that allowed for a child in paragraph (m)(17)(ii) of this section, must apply for and obtain a change of nonimmigrant classification to F–1, J–1, or M–1 status. An M–2 spouse or child who was enrolled on a full time basis prior to January 1, 2003, will be allowed to continue study but must file for a change of nonimmigrant classification to F–1, J–1, or M–1 status on or before March 11, 2003.

(C) An M–2 spouse or M–2 child violates his or her nonimmigrant status by engaging in full time study except as provided in paragraph (m)(17)(i) and (ii) of this section.

(18) *Current name and address.* A student must inform the Service and the DSO of any legal changes to his or her name or of any change of address, within 10 days of the change, in a manner prescribed by the school. A student enrolled at a SEVIS school can satisfy the requirement in 8 CFR 265.1 of notifying the Service by providing a notice of a change of address within 10 days to the DSO, and the DSO in turn shall enter the information in SEVIS within 21 days of notification by the student. A nonimmigrant student enrolled at a non-SEVIS institution must submit a notice of change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. Except in the case of a student who cannot receive mail where he or she resides, the address provided by the student must be the actual physical location where the student resides rather than a mailing address. In cases where a student provides a mailing address, the school must maintain a record of, and must provide upon request from the Service, the actual physical location where the student resides.

* * * * *

8. Section 214.3 is amended by:

a. Revising paragraph (a)(2)(i)(F);

b. Adding a new paragraph (a)(2)(v);

c. Adding a new paragraph (e)(3);

d. Revising paragraphs (g)(1)(iv) and (g)(1)(v);

e. Revising the paragraph heading and by adding two new sentences at the end of paragraph (g)(2);

f. Adding new paragraphs (g)(3) and (g)(4);

g. Revising paragraph (k) introductory text; and by

h. Revising paragraph (l).

The additions and revisions read as follows:

§ 214.3 Petitions for approval of schools.

(a) * * *

(2) * * *

(i) * * *

(F) A private elementary school.

* * * * *

(v) The following may not be approved for attendance by foreign students:

(A) A home school,

(B) A public elementary school, or

(C) An adult education program, as defined by section 203(l) of the Adult Education and Family Literacy Act, Public Law 105–220, as amended, 20 U.S.C. 9202(l), if the adult education program is funded in whole or in part by a grant under the Adult Education and Family Literacy Act, or by any other Federal, State, county or municipal funding.

* * * * *

(e) * * *

(3) *SEVIS reporting.* Upon approval of a petition, the district director shall update SEVIS to reflect approval of the petition. An e-mail notification will be sent to the principal DSO by SEVIS. An approved school that has been enrolled in SEVIS must immediately update SEVIS to reflect any material changes to its name, address or curriculum for a determination of continued eligibility for approval.

* * * * *

(g) * * *

(1) * * *

(iv) Current address where the student and his or her dependents physically reside. In the event the student or his or her dependents reside on or off campus and cannot receive mail at that location, the school may provide a mailing address. The school, however, must maintain a record of the physical location of residence of the student and his or her dependents and provide such information to the Service upon request. Once SEVIS is modified, in cases where the mailing and physical address are not the same, the school will be required to report both the student's current mailing and current physical address in SEVIS.

(v) The student's current academic status.

* * * * *

(2) *Reporting requirements for non-SEVIS students.* * * * In the case of a student that does not have an electronic record in SEVIS, the Service will notify the school if the student enters the U.S. to attend their institution. No later than 30 days following the deadline for registering for classes, the school is then required to contact the Service if that student fails to register.

(3) *SEVIS reporting requirements.*

(i) Within 21 days of a change in any of the information contained in paragraph (e)(3) of this section, schools must update SEVIS with the current information.

(ii) Schools are also required to report within 21 days of the occurrence the following events:

(A) Any student who has failed to maintain status or complete his or her program;

(B) A change of the student's or dependent's legal name or U.S. address;

(C) Any student who has graduated early or prior to the program end date listed on SEVIS Form I–20;

(D) Any disciplinary action taken by the school against the student as a result of the student being convicted of a crime; and

(E) Any other notification request made by SEVIS with respect to the current status of the student.

(iii) Each term or session and no later than 30 days after the deadline for registering for classes, schools are required to report the following registration information:

(A) Whether the student has enrolled at the school, dropped below a full course of study without prior authorization by the DSO, or failed to enroll;

(B) The current address of each enrolled student; and

(C) The start date of the student's next session, term, semester, trimester, or quarter.

(4) *Administrative correction of a student's record.* In instances where technological or computer problems on the part of SEVIS cause an error in the student's record, the DSO may request the SEVIS system administrator, without fee, to administratively correct the student's record.

* * * * *

(k) *Issuance of Certificate of Eligibility.* A designated school official (DSO) of a school approved by the Service to enroll nonimmigrant students must sign any completed Form I–20 issued for either a prospective or continuing student or a dependent. A Form I–20 issued by an approved school system must state which school within the system the student will attend. The form must only be issued from within the United States. Only a designated official of a Service approved school shall issue a Certificate of Eligibility, Form I–20, to a prospective student and his or her dependents, and only after the following conditions are met:

* * * * *

(l) *Designated official—*

(1) Meaning of term *Designated Official.* As used in §§ 214.1(b), 214.2(b), 214.2(f), 214.2(m), and 214.4, a *Designated Official, Designated School Official (DSO),* or *Principal Designated*

School Official (PDSO), means a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. An individual whose principal obligation to the school is to recruit foreign students for compensation does not qualify as a designated official. The PDSO and any other DSO must be named by the president, owner, or head of a school or school system. The PDSO and DSO may not delegate this designation to any other person.

(i) A PDSO and DSO must be either a citizen or lawful permanent resident of the United States.

(ii) Each campus must have one PDSO. The PDSO is responsible for updating SEVIS to reflect the addition or deletion of all designated officials on his or her associated campus. The Service will also use the PDSO as the point of contact on any issues that relate to the school's compliance with the regulations as well as any system alerts generated by SEVIS. In all other respects the PDSO and DSO will share the same responsibilities.

(iii) Each school may have up to 10 designated officials at any one time, including the PDSO. In a multi-campus school, each campus may have up to 10 designated officials at any one time including a required PDSO. In a private elementary or public or private secondary school system, however, the entire school system is limited to 10 designated officials at any one time including the PDSO.

(2) *Name, title, and sample signature.* Petitions for school approval must include the names, titles, and sample signatures of designated officials. An approved school must update SEVIS upon any changes to the persons who are principal or designated officials, and furnish the name and title of the new official within 21 days of the change. Any changes to the PDSO or DSO must be made by the PDSO. In its discretion, the Service may reject the submission of any individual as a DSO or withdraw a previous submission by a school of an individual.

(3) *Statement of designated officials.* A petition for school approval must include a statement by each designated official certifying that the official is familiar with the Service regulations relating to the requirements for admission and maintenance of status of nonimmigrant students, change of nonimmigrant status under part 248 of this chapter, and school approval under §§ 214.3 and 214.4, and affirming the official's intent to comply with these regulations. At the time a new designated official is added, the designated official must make the same certification.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

9. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

10. Section 248.3 is amended by revising paragraph (e)(2) to read as follows:

§ 248.3 Application.

* * * * *

(e) * * *

(2) An alien classified under sections 101(a)(15)(A) or 101(a)(15)(G) of the Act as a member of the immediate family of a principal alien classified under the same section, or an alien classified under sections 101(a)(15)(E), (H), (I), (J), (L), or (Q)(ii) of the Act as the spouse or child who accompanied or followed-to-join a principal alien who is classified under the same section, may attend school in the United States, provided that the principal alien or spouse or child maintain their nonimmigrant status.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

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

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

12. Section 274a.12 is amended by:

a. Removing and reserving paragraph (b)(6)(ii);

b Revising paragraph (b)(6)(iii);

c. Revising paragraph (b)(11);

d. Revising the last sentence of paragraph (c)(3)(ii); and by

e. Revising paragraph (c)(3)(iii).

The revisions read as follows:

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

* * * * *

(b) * * *

(6) * * *

(ii) [Reserved]

(iii) Curricular practical training (internships, cooperative training programs, or work-study programs which are part of an established curriculum) after having been enrolled full-time in a Service approved institution for one full academic year. Curricular practical training (part-time or full-time) is authorized by the Designated School Official on the student's Form I–20. No Service endorsement is necessary.

* * * * *

(11) An exchange visitor (J–1), pursuant to § 214.2(j) of this chapter and 22 CFR part 62. An alien in this status may be employed only by the exchange visitor program sponsor or appropriate designee and within the guidelines of the program approved by the Department of State as set forth in the Form DS–2019, Certificate of Eligibility, issued by the program sponsor;

* * * * *

(c) * * *

(3) * * *

(ii) * * * The F–1 student must also present a Form I–20 ID or SEVIS Form I–20 with employment page completed by DSO certifying eligibility for employment; or

(iii) Is seeking employment because of severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C) and has filed the Form I–20 ID and Form I–538 (for non-SEVIS schools), or SEVIS Form I–20 with employment page completed by the DSO certifying eligibility, and any other supporting materials such as affidavits which further detail the unforeseen economic circumstances that require the student to seek employment authorization.

Dated: December 5, 2002.

Michael J. Garcia,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–31184 Filed 12–6–02; 1:45 pm]

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Federal Register

Wednesday,
December 11, 2002

Part IV

Environmental Protection Agency

Sustainable Futures — Voluntary Pilot Project Under the TSCA New Chemicals Program; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0011; FRL–7198–6]

RIN 2070–AD60

Sustainable Futures — Voluntary Pilot Project Under the TSCA New Chemicals Program; Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a voluntary pilot project by EPA, entitled Sustainable Futures, to encourage the application of pollution prevention principles during the development of new chemicals submitted as premanufacture notices (PMNs) under section 5 of the Toxic Substances Control Act (TSCA). Certain expedited review under section 5 of TSCA is proposed as an incentive to PMN submitters. The goal of this pilot project is to encourage pollution prevention and the development of inherently low hazard chemicals. Furthermore, the Agency seeks to gain additional data and experience regarding the pollution prevention, risk reduction, and source reduction benefits of use of hazard, exposure, and risk screening methodologies such as EPA's Pollution Prevention Framework in new product development efforts.

DATES: Comments are solicited on or before June 9, 2003.

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: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: For New Chemicals Program regulatory information: Kenneth T. Moss, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; e-mail address: moss.kenneth@epa.gov. For information about P2 Framework and Training or Workshops: Bill Waugh or Maggie Wilson, Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone numbers: (202) 564–7657 or 564–8924; e-mail addresses: waugh.bill@epa.gov or wilson.maggie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are or may in the future be a submitter of a PMN under TSCA. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers or importers (NAICS 325, 32411, 28, 2911). Anyone who plans to manufacture or import a new chemical substance (as defined in TSCA section 3) for a non-exempt commercial purpose is required to provide the EPA with a PMN at least 90 days prior to the activity. Any TSCA Chemical substance that is not on the TSCA Inventory is classified as a new chemical.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0011. 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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/.

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. 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. Once in the system, select ''search,'' then key in the appropriate docket ID 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.

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 OPPT–2002–0011. 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 oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2002–0011. 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: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0011. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. 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. 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

Under section 5(a) of TSCA, persons must notify EPA at least 90 days before manufacturing or importing a new chemical substance for non-exempt purposes. A new chemical substance, as defined in section 3(9) of TSCA, is any chemical substance (as defined in section 3(2) of TSCA) that is not included on the Inventory compiled under section 8(b) of TSCA. EPA requires that submissions be made on EPA Form 7710–25– Premanufacture

Notice (PMN). The Agency encourages chemical manufacturers to incorporate health and environmental issues into product decisionmaking during the development of new chemical substances. EPA has several ongoing initiatives intended to help stakeholders better assess risk issues during the early stages of chemical development efforts. Examples include the Design for Environment Program, the Green Chemistry Program, and the Pollution Prevention Framework (P2 Framework), among other programs. Of specific relevance to today's notice is the P2 Framework as utilized in the development of safer new chemicals submitted as PMNs under section 5 of TSCA.

A. What Action is the Agency Taking?

The Agency seeks to gain additional data and experience regarding the pollution prevention, safer chemicals, risk reduction, and source reduction benefits of use of hazard, exposure, and risk screening methodologies such as the P2 Framework in new product development efforts. To help build this knowledge base the Agency has established this pilot project, entitled Sustainable Futures, to encourage application of pollution prevention principles during the development of new chemicals under TSCA, known hereafter as the ''pilot project.'' While EPA's major goal is development of safer new chemicals, for purposes of the pilot it will also consider low-moderate hazard chemicals for which exposure assessment indicates potentially low risk. This pilot project is entirely voluntary and will enable the Agency to develop information to support a possible future exemption under section 5(h)(4) of TSCA based on experience gained in Sustainable Futures. Under this initiative, pilot project participants would be encouraged to become proficient with and to apply the Pollution Prevention Framework (P2 Framework) or other scientifically acceptable hazard, exposure, and risk screening methods in new chemical development efforts. To encourage industry participation in this voluntary pilot project, the Agency will consider providing certain expedited review to participants in the pilot project. This notice provides additional detail relating to the expedited review available under this pilot project and discusses criteria or factors EPA will consider to determine eligibility for the pilot project and associated expedited review.

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

This pilot project is entirely voluntary and will enable the Agency to develop information to support a possible future exemption to the PMN reporting requirements of section 5 of TSCA, under section 5(h)(4) of TSCA and based on experience gained in Sustainable Futures. See below for a further explanation of these requirements and general information on the New Chemicals Program.

C. Overview of the PMN Process

Under section 5(a) of TSCA, persons must notify EPA at least 90 days before manufacturing or importing a new chemical substance for non-exempt purposes. EPA requires that submissions be made on EPA Form 7710–25 – Premanufacture Notice (PMN). Along with the PMN submitters must send in all available data on chemical identity, production volume, byproducts, use, environmental release, disposal practices, and human exposure. In addition, submitters must send in all existing health and environmental data in the possession of the submitter, parent company, or affiliates. All of this information is considered by Agency risk assessors to determine whether manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, presents an unreasonable risk of injury to health or the environment. In some cases, EPA can require submission of any additional data, including development of data through testing, when the information included with the PMN, coupled with that available to its risk reviewers from internal archives is not adequate to allow EPA to make this determination. The Instruction Manual for Premanufacture Notification of New Chemical Substances explains all reporting requirements.

EPA has limited or no reporting requirements for new chemical substances in the following cases:

- Low Volume Exemption (LVE) — 10,000 kilograms or less of the substance will be manufactured or imported each year under the requirements at (40 CFR 723.50). Notification required, using EPA Form 7710–25 (the PMN Form).
- Research and Development (R&D) — the substance is manufactured in small quantities for research and development, and special procedural and recordkeeping requirements are met (40 CFR 720.36 and 720.78). Notification not required.
- Low Releases and Low Exposures (LoREX) Exemptions — the substance is expected to have low release and exposure under the requirements at 40 CFR 723.50. Notification required, using the PMN Form.
- Test Marketing Exemption (TME) — the substance is being manufactured or imported for TME, under the requirements at 40 CFR 720.38. Notification required, using the PMN Form.
- Polymer Exemption — the substance is a polymer that meets certain specified criteria where the substance is not considered chemically active or bioavailable under the requirements at 40 CFR 723.250. Annual report to the Agency is required for those exempt polymers commenced for the first time in the preceding calendar year.

Section 5 of TSCA gives EPA 90 days to review a PMN (also referred to as a ''section 5 notice''). The PMN program has evolved into an efficient mechanism to identify new chemicals which are of greatest concern during the early stages of the 90-day review process and focus detailed analysis on these cases with the ultimate goal of identifying and controlling unreasonable risks. EPA utilizes an integrated approach that draws on knowledge and experience across scientific and organizational lines to identify and evaluate concerns regarding health and environmental effects, exposure and release and economic impacts. PMNs and exemption notices share the early stages of the 90-day PMN review process; LVE and LoREX applications conclude review by day 30 and TME applications by day 45.

A large majority of PMN submissions are reviewed, evaluated and dropped from further consideration during the early stages, i.e., first 30 days, of the PMN review period. The early stages of the PMN review period include:

1. The Chemical Review and Search Strategy Meeting;
2. The Structure Activity Team Meeting;
3. Development of the Exposure and Release Profile; and
4. The Focus Meeting.

The Chemical Review and Search Strategy (CRSS) meeting (day 8–12) examines chemical identity; structure/chemical nomenclature; structural analogs/TSCA Inventory Status; synthesis (including byproducts and impurities); use/TSCA jurisdiction as provided by the PMN submitter, open literature, or as identified by EPA for similar chemical substances; physical/chemical properties (physical state, molecular weight, melting and boiling point, vapor pressure, solubility, octanol water partition co-efficient, pH); and

pollution prevention aspects, using information provided by the PMN submitter. EPA also may make suggestions for alternate synthetic pathways. Decisions at this meeting include notice completeness, validity, reportability, eligibility for exemption, candidacy for exposure-based review (PMN has potential for substantial production volume and substantial or significant human exposure or substantial environmental release), and whether the notice meets certain CRSS drop criteria.

The Structure Activity Team meeting (day 9–13) is an interdisciplinary meeting of scientists, including chemists, biologists, toxicologists, and information specialists, which evaluates potential environmental fate, health effects and environmental hazard through the use of structure activity relationships (SAR), test data on the new chemical substance, data on structural analogs, and expert judgment.

The Initial Exposure and Release Assessments are developed by Day 10–19 and examine occupational exposure, environmental releases, and environmental, general population and consumer exposures.

The Focus meeting (Day 15–20) is the earliest risk management meeting in the section 5 notice review period; representatives from all PMN technical disciplines are involved in this assessment. Initial decisions are developed at this meeting. For Exemption notices, the initial decisions are to grant or deny the notice, with or without certain conditions of use specified in the notice, to which the submitter is legally bound. Focus meeting decisions for PMNs can range from identifying the need to consider a ban or section 5(e) of TSCA regulation of the new chemical to a ''drop'' from further Agency review. A PMN can also continue on to a more detailed review which occupies much of the remainder of the 90-day period. Regardless of whether the Agency drops a PMN submission during the early stages of review at the Focus meeting or near the end of the statutorily mandated 90-day PMN review period, the PMN submitter is nonetheless not allowed to commence manufacture before day 90 of the review period.

The review period can be extended under section 5(c) of TSCA for good cause; it may also be suspended voluntarily by the mutual consent of EPA and the PMN submitter. During the review period for PMNs, EPA may take action under section 5(e) or (f) of TSCA to prohibit or limit the production, processing, distribution in commerce, use, and disposal of new chemical substances that raise health or environmental concerns. If EPA has not taken action under section 5(e) or (f) of TSCA, the PMN submitter may manufacture or import the new chemical substance when the review period expires (i.e., day 90) and need merely notify the agency of commencement of manufacture or import. Similarly, during the review period for PMN exemption notices, EPA may take action to prohibit or limit the production, processing, distribution in commerce, use, and disposal of new chemical substances that raise health or environmental concerns. If EPA has not taken action to deny the exemption application, under section 5(h)(1) for TMEs or section 5(h)(4) of TSCA for LVE and LoREX notices, the notice submitter may manufacture or import the new chemical substance when the respective review period for those notices expires (i.e., day 45 for TME or day 30 LVE and LoREX).

No later than 30 days after the PMN submitter initiates manufacture or import of the PMN substance, it must provide EPA with a notice of commencement of manufacture or import (NOC). Section 8(b) of TSCA provides that, upon receipt of such a notice, EPA must add the substance to the TSCA Inventory. Thereafter, other manufacturers and importers may engage in activities involving the new substance without submitting a PMN, unless the Agency has used its Significant New Use Rule (SNUR) authority under section 5(a)(2) of TSCA to designate a use of a chemical substance as a ''significant new use.'' Section 5(a)(1)(B) of TSCA would then require persons to submit a Significant New Use Notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the substance for the use designated as significant. The required SNUN provides EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs.

D. History

EPA has over 20 years experience in reviewing PMNs and exemption notices under TSCA on a wide variety of classes or categories of chemicals. During this period the Agency has reviewed over 38,000 PMNs and section 5 of TSCA exemption notices.

Historically, it has been EPA's policy to not allow simultaneous submission of section 5 exemption notices and PMNs for the same substance. For LVEs, EPA restricts submission of a PMN until nine months after the date on which a LVE is approved by EPA (i.e., 90 days before termination of the one year low volume period) and restricts a LVE when a pending PMN estimates a production volume greater than 10,000 kilograms per year. This policy, in interpreting the intent of the rule, places emphasis on the rule's use of the words 10,000 kilograms ''per year,'' rather than per any lesser time period. Accordingly, EPA has denied a LVE because a PMN simultaneously submitted by the same company on the same chemical estimated the production volume to be over 10,000 kilograms per year.

Test Market Exemption (TME) applications have been allowed in combination with Premanufacture Notices (PMNs) only if the submitter's description clearly distinguishes the test marketing activity from full-scale commercial production or research and development. EPA's New Chemical Information Bulletin Exemptions for Research and Development and Test Marketing (USEPA, 1986, see Unit XV.1.) describes how the Agency, in order to discourage the use of simultaneous submissions to simply obtain PMN review of a chemical substance in 45 days, closely examines such submissions to determine if genuine test marketing activity is involved; if it is not, the application has been denied. The suggested mechanism for such a combination submission has been that, following the submission of a TME application, the same company may not submit a PMN for the same chemical until 90 days before the end of the test marketing period specified by the company in its TME application pursuant to 40 CFR 720.38(b)(5).

III. What is the P2 Framework?

The P2 Framework (USEPA, 2000, see Unit XV.2.) is a set of computer models that predict hazards and exposures of chemicals using structure activity relationships (SARs), exposure assessment models and databases, and standard (default) scenarios. These models have been developed over a 20-year period by EPA's Office of Pollution Prevention and Toxics, and others in the scientific and technical community, to screen new chemicals in the presence of limited data. Annually, EPA evaluates over 2,000 new chemicals submitted under section 5 of TSCA. TSCA requires that EPA evaluate the chemicals within 90 days. Although the law does not generally require that the submitter conduct laboratory tests to evaluate potential hazards of the chemicals, PMN submissions must include all available existing information on exposure and environmental release on new chemicals and the Agency will use this information or, in absence of supplied information, professional judgment to

evaluated exposures and releases. Operating under this time limitation, and often a lack of data, EPA developed methods to quickly screen chemicals to assess human and environmental hazards, physical/chemical properties, environmental fate, human and environmental exposures, and risks.

The P2 Framework models listed in the table in this unit, capture the expertise of multiple EPA scientists, grantees, support contractors, and others in the scientific community working for over 20 years screening chemicals in the presence of limited data. The P2 Framework project presents these models to industry with the hope that the models will be useful in identifying potential problem chemicals and processes early in the research and development process. EPA believes that application of hazard screening methodologies early in new chemicals research and development will lead to commercialization of safer new chemical substances. In other instances where chemicals are projected to present a low-moderate hazard concern, exposure and risk screening methodologies can be used early in the research and development process to identify lower risk chemical alternatives. The table also provides information regarding the availability of the models.

P2 FRAMEWORK MODELS

Model	Endpoints addressed	Inputs needed	Availability
Models to Estimate Physical-Chemical Properties			
EPI Suite™	Melting and Boiling Points, Vapor Pressure; Octanol/water partition coefficient (Kow); Water solubility from log Kow; Soil organic carbon partition coefficient (Koc); Henry's law constant: vapor pressure/water solubility; Fish bioconcentration factor	Chemical Abstract Service Registry Number (CAS RN), if in Smilecas database – CAS database of Simplified Molecular Input Line Entry System (SMILES) – or Chemical Structure in SMILES notation	Download at no cost from http://www.epa.gov/oppt/exposure/docs/episuitedl.htm
Models to Estimate Environmental Fate			
EPI Suite™	Atmospheric oxidation potential; Biodegradation rate; Hydrolysis rate; Percent removal in POTW (Publicly Owned Treatment Works)	Chemical Abstract Service Registry Number (CAS RN), if in Smilecas database – CAS database of Simplified Molecular Input Line Entry System (SMILES) – or Chemical Structure in SMILES notation	Download at no cost from http://www.epa.gov/oppt/exposure/docs/episuitedl.htm
Models to Estimate Human Health and Environmental Hazards			
OncoLogic	Cancer hazard potential	Chemical structure	Developed by USEPA, OPPT and LogiChem under a cooperative agreement. Information http://logichem.com/
ECOSAR™	Acute and chronic toxicity to fish, invertebrates, algae	CAS RN (if in Smilecas db) or Chemical Structure in SMILES notation	Download at no cost from http://www.epa.gov/oppt/newchems/21ecosar.htm
Models to Estimate Exposure			
E-FAST	Surface water ingestion, fish ingestion, ground water ingestion, ambient air inhalation, indoor air inhalation, dermal exposure, aquatic environment exposure/risk	Physical/chem properties, fate properties, release amounts, release medium, release location, aquatic concentration of concern, National Pollutant Discharge Elimination System (NPDES) number.	Download at no cost from http://www.epa.gov/oppt/exposure/docs/efast.htm
ReachScan	Impact of surface water discharges on drinking water facilities, chemical concentration downstream at drinking water intake point	Facility location (NPDES), release data	EPA is updating ReachScan and will make information available on its use in this and other programs at http://www.epa.gov/oppt/exposure/docs/reachscan.htm
ChemSTEER	Occupational inhalation and dermal exposure during industrial and commercial manufacturing, processing, and use operations; industrial & commercial manufacturing, & processing releases to air, water, and land	Molecular weight, vapor pressure, density; production or use volume, fractions devoted to multiple uses; weight fractions, physical state. Numbers of sites & workers, batch amounts & times, release sources, worker activities; workplace concentrations, release amounts & media.	Download at no cost from http://www.epa.gov/oppt/exposure/docs/chemsteer.htm

IV. How Has the Agency Worked to Educate Industry About the P2 Framework?

Over the last several years the Agency has gained considerable experience in working with stakeholders (e.g., chemical manufacturers, formulators, users, consulting firms, etc.) in the application of the P2 Framework during new product development. EPA has conducted detailed P2 Framework workshops and training exercises, including workshops in California, Texas, Illinois, New Hampshire, and Virginia. These workshops were designed to introduce stakeholders to the P2 Framework and to help stakeholders develop experience in the use, interpretation, limitations and applicability of the P2 Framework methodologies in chemical hazard and exposure screening. The workshops also discussed use of the P2 Framework outputs in risk screening analyses. Approximately 100 companies, among other stakeholders, have participated in the P2 Framework workshops and training. In addition to providing workshops and training sessions, the Agency has worked with individual companies, and other stakeholders, regarding opportunities to apply the P2 Framework in the development of environmentally preferable new chemical products and other activities designed to identify and implement pollution prevention opportunities.

V. What Is the Potential Benefit Derived from Use of the P2 Framework?

Companies that develop new chemical substances often have alternative chemical structures that could become the subject of a PMN. Chemical manufacturers and users often lack hazard- and exposure-related information on new chemical alternatives and, as a result, sometimes choose among new chemical product alternatives without an understanding of the potential hazard and risk trade-offs of product alternatives under consideration. Many companies that have used the P2 Framework indicate that the P2 Framework generates screening-level information about human and environmental hazards and exposures, and that this information helps further differentiate among product alternatives, leading to identification of alternatives which are potentially safer or present lower potential risks or, in other cases, the development of environmentally preferable products and processes and other pollution prevention outcomes. It is hoped that the P2 Framework will enable PMN submitters to design safer products and conduct an analysis similar to that done by EPA for each new chemical submitted, and to identify and develop products and processes that can be sustained both environmentally and economically.

Chemical companies, consultants, research and development laboratories, etc. which have applied the P2 Framework during new chemical and product development activities have indicated that the P2 Framework:

1. Generates chemical specific hazard and exposure related information previously unavailable;
2. Helps compare new chemical product alternatives based on hazard, exposure, and risk considerations early in the product development process, when change is most cost effective;
3. Helps identify environmentally preferable new products and processes;
4. Reduces the generation of hazardous waste that typically occurs during product development; and
5. Results in potentially significant financial and business benefits, among other benefits (Tellus Institute, 1999, see Unit XV.3; Eastman Kodak, 1996, see Unit XV.4).

VI. What Is the Regulatory Incentive for Chemical Manufacturers under this Sustainable Futures Pilot Project?

For purposes of this voluntary pilot project, EPA will implement a program leading to the opportunity for simultaneous submissions of TME applications and PMNs on chemical substances for which the submitter demonstrates the application and use of the P2 Framework or other scientifically acceptable hazard and exposure screening methodologies. While EPA's major goal is the development of safer chemicals, it will also consider, for the purposes of this pilot, low-moderate hazard chemicals for which exposure assessment indicates potentially low risk. Thus, under the pilot, the submitter, following approval of the TME by the Agency, can begin manufacture of the chemical substance for test marketing purposes, in accordance with the TME after 45 days. They must continue to meet the exemption requirements for an additional 45 days, at which time the 90-day PMN review may be satisfactorily completed and they may then submit the NOC and begin manufacture for PMN purposes.

Under the voluntary pilot project, qualifying simultaneous PMN/TME submitters may begin manufacture of those chemical substances at 45 days in accordance with the TME. As described in Unit II.A., most decisions on PMNs or TMEs are made before day 30 of their review periods, which in the case of simultaneous submissions would run concurrently. Chemicals qualifying for this option will be restricted to those PMN/TME chemical substances that the Agency, in the case of a PMN, drops from review and, in the case of a TME, grants by the Focus meeting which occurs by day 30 of the 90- or 45-day review period, respectively, and which satisfy certain criteria described below (see Unit IX.). In granting a TME, the chemical substance (and its associated uses and exposures) must be judged by EPA to meet the requirement that it ''will not present an unreasonable risk of injury to human health and the environment,'' after which the submitter can commence TME activities at 45 days. EPA will also review the simultaneously submitted PMN and, provided the TME is granted and the PMN is dropped during the first 30 days of the 90-day review period, the submitter may then commence full commercialization on or after day 90 of PMN review and file the NOC. All TME requirements must, however, be met until such time as commencement of manufacture occurs and the NOC is filed, at which point the substance becomes an existing chemical and is placed on the TSCA Inventory. If EPA grants the TME, but does not drop the PMN during the first 30 days of review, the submitter will be notified that the submitter must choose, by letter within 15 days of being notified of the Agency's decision, to continue only one of the two notification procedures (i.e., withdraw the TME and continue with the PMN, or continue with the TME and withdraw the PMN).

VII. How Could EPA Decide to Approve a TME but Identify Concerns with a PMN on the Same Chemical?

As mentioned in Unit II.B., a TME submitter's description must clearly distinguish the test marketing activity from full-scale commercial production or research and development. When EPA approves the TME, it has determined that test marketing the new chemical substance, under terms and conditions set out in the TME application and any additional controls stipulated in an accompanying **Federal Register** notice announcing Agency approval of the TME, will not present an unreasonable risk of injury to health or the environment. Such specific conditions of approval include the test market time period, production volume, number of customers, and use. Upon review of the same chemical when submitted as a PMN, the Agency could determine that a higher production volume or distribution and use of the

chemical without the limitations imposed under the TME may present an unreasonable risk to human health or the environment, and therefore take regulatory action under section 5(e) of TSCA. The Agency also reserves the right to rescind approval or modify the conditions and restrictions of a TME during the TME period should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to human health or the environment.

VIII. How Will Accepting Simultaneous PMN/TME Submissions for P2 Screened Chemicals Benefit the Agency and the Public?

This voluntary pilot project to accept simultaneous PMN/TME submissions will enable the Agency to develop information to support a possible future exemption under section 5(h)(4) of TSCA based on experience gained in Sustainable Futures. This would include information on the adequacy and effectiveness of companies' use of Agency tools and models to improve the environmental health and safety attributes of the new chemicals notified to EPA under section 5 of TSCA. It is hoped that this modification in the Agency's policy under section 5 of TSCA ultimately results in fewer section 5 notices requiring extensive Agency review or negotiation of necessary risk controls with submitters, and in safer chemicals being introduced to market.

IX. What Are EPA's Suggested Approach and Criteria for Participation in the Voluntary Sustainable Futures Pilot Project?

The Agency solicits participation on the part of chemical companies, and other stakeholders, in this voluntary pilot project. In order to qualify for this pilot project, and associated expedited review, companies subject to section 5 of TSCA reporting requirements must demonstrate experience and competence with the P2 Framework or other scientifically acceptable approaches to chemical risk screening. Typically, EPA expects that the following will be necessary:

A. Training

Companies interested in participating in this pilot project must demonstrate an understanding of the scope, applicability, interpretation, and limitations of pollution prevention and chemical hazard and exposure screening tools, such as the P2 Framework, that can be used to conduct screening level assessments of chemicals based on an analysis of chemical structure or other considerations. EPA will offer P2 Framework risk screening software to participating companies and other interested stakeholders. The Agency will also offer detailed training workshops to those interested in learning more about the P2 Framework models. EPA conducts workshops and presentations that provide an overview of the P2 Framework models to industry and other stakeholders (see Unit IV.). P2 Framework workshops are 2–3 days in length, involve hands-on training in the use, interpretation, and limitations of P2 Framework methodologies. Attendees of the P2 Framework workshops are encouraged to bring to the workshop the CAS Registry Numbers or structures of the types of chemicals of specific interest to them so that the attendee may use these as examples when that attendee runs the models during the workshop. Attendees should not bring any CBI chemicals to the workshops. P2 Framework workshops are particularly well suited for participants with a strong background in chemistry and familiarity with issues associated with human health and environmental hazard, exposure, and risk assessment. Those interested in learning about dates and times for upcoming training, whether given by EPA or other qualified individuals, should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** or check the New Chemicals Program web site www.epa.gov/oppt/newchems/.

B. Apply Hazard and Exposure Screening Tools

Companies must apply hazard and exposure screening tools to gain hazard-, exposure-, and risk-related information on chemical alternatives under consideration in the R&D and product development stages and demonstrate to EPA that this information has been used to inform decisionmaking to select safer new chemical alternatives to submit as the subject of a new chemical notification, and, where appropriate, to identify opportunities to eliminate or control exposures through process controls.

The Agency is interested in learning if, how, and when hazard and exposure screening tools are of value to participants in the pilot as they choose among chemical alternatives that may become the subject of a PMN notice. This type of information will be considered in the development, if deemed appropriate, of a new exemption under section 5(h)(4) of TSCA based on experience gained in Sustainable Futures. In order to help determine if a new exemption is appropriate, participants in this pilot project may be asked to provide either summary or detailed information to EPA, described below, that demonstrates that the submitter has used information gained using the hazard and exposure screening tools to inform their decisionmaking to select safer new chemical alternatives that became the subject of the submission. Pilot project participants should provide this information on or as an attachment to page 11 (''Optional Pollution Prevention Information'') of the PMN form. Submitters should be aware that EPA may request additional information where warranted in support of the goal of this pilot project. The goal of this project is to encourage pollution prevention and the development of inherently low hazard chemicals. The Agency solicits comments on the type of information to submit to EPA that (a) captures an increase in proficiency in a company's use of these assessment tools or (b) discusses hazard or risk reduction in PMNs ultimately submitted to the Agency, in contrast to those chemicals not submitted because of concerns raised through the use of the tools.

Summary level information should include:

1. The number of chemical alternatives (if more than one) evaluated,
2. The screening models used,
3. Factors on which decisions were based, such as vapor pressure, PBT characteristics, aquatic toxicity, potential human exposure, etc., and
4. The submitter's perspective on the extent to which the P2 Framework, or similar methodologies, helped in the understanding of hazard-, exposure-, and risk-related issues of the PMN chemical. In addition, information is solicited regarding the extent to which the methodologies helped the submitter compare or contrast product or process alternatives based on hazard-, exposure-, and risk-related information.

Three different examples of summary level information are provided below:

- Due to a number of factors, only one chemical substance was identified as having necessary product performance characteristics. As a result, there were no product alternatives to evaluate. Our company used the P2 Framework models on the single chemical meeting product performance characteristics. This analysis indicated low hazard potential for both human health and ecological effects. In addition, the material showed low persistence and low bioconcentration potential. As a result, we concluded the material presents low hazard/low risk.
- Five alternatives were evaluated for environmental fate and persistence,

bioconcentration potential, aquatic toxicity, and health effects using XYZ methodologies (e.g., the P2 Framework). While the aquatic toxicity and human health hazard profiles of all five were equivalent (i.e., low), two compounds were seen as persistent and with bioconcentration potential much higher than the other three alternatives. The PMN substance was selected from among these three alternatives having lower persistence and bioconcentration potential. In addition, application of exposure models indicated that exposure controls on specific areas, e.g., environmental release, occupational etc., were warranted. These controls have been identified and their effectiveness has been sufficiently described in the PMN submission.

• The results of the P2 Framework model runs helped to differentiate among product alternatives based on hazard and exposure issues. It helped our company identify a product that is the most environmentally preferable based on its hazard (e.g., low aquatic toxicity and low concern for adverse effects to human health) and exposure (e.g., less persistent) properties. The P2 Framework software package helped us think about chemical design options and exposure issues, including manufacturing controls to choose among product alternatives. These controls have been identified and their effectiveness has been sufficiently described in the PMN submission.

More detailed information may also be provided, for example, the actual outputs from the methodologies used, or screening level hazard assessments for low hazard chemicals and, for low-moderate hazard chemicals, submission of a screening-level exposure and risk assessment. EPA's P2 Framework, as well as other hazard, exposure, and risk screening methods, can be used to assist in many, although not all, components of such an assessment. This screening level assessment could include:

1. Physical/chemical properties, potential environmental transport, and environmental fate;

2. Human health effects such as cancer hazard potential, organ toxicity, reproductive and/or developmental toxicity, neurotoxicity or other health endpoints of potential concern;

3. Toxicity to the aquatic environment, i.e., aquatic vertebrates, invertebrates and plants;

4. As appropriate, environmental releases, exposure to the general population, consumer exposure, occupational exposure, and environmental exposure;

5. Descriptions of exposure and release mitigation steps, such as personal protective equipment and engineering controls information; and

6. Summary conclusions regarding the hazards, exposure, and risks of product alternatives including a determination if alternatives under consideration exceed EPA new chemicals program criteria for PBT (Persistent, Bioaccumulative and Toxic) chemical substances (64 FR 60194, November 4, 1999), or ecotoxicity concern levels described in the P2 Framework Manual (see http://www.epa.gov/pbt/P2 _ Manual _6-00.pdf – ''ECOSAR to Estimate Aquatic Toxicity'').

Assessments need not include every factor listed in this unit, depending on the specific chemical submitted, intended uses, etc. For example, toxicity to aquatic organisms would not need to be evaluated if no environmental releases are anticipated under expected conditions of manufacture, processing, and use of the new chemical. Additional guidance regarding preparation of screening-level assessments, including examples of screening-level assessments, and other technical assistance, will be provided during P2 Framework training workshops, discussed above.

C. Submit 5-10 Successful PMNs or PMN Exemption Notices

Companies will need to submit 5-10 successful (i.e., not regulated by EPA) PMNs or PMN exemption notices which have been developed using chemical hazard and exposure screening tools, and which had, as part of the submission, documentation (summary or detailed) of chemicals evaluated, models used, endpoints on which decisions were based, and the submitter's perspectives on the extent to which the screening tools provided useful information to compare alternatives and select safer chemicals.

Pilot project participants' PMN submissions will be evaluated by EPA consistent with the normal PMN review process. Participants will typically be eligible for the expedited review described in Unit VI. of this notice after 5–10 new chemical cases (PMNs or PMN exemption notices) have been successfully screened by the company, as described above, submitted to EPA, and determined to be low hazard and/or low risk by EPA. The Agency will, at its discretion, consider requests for expedited review before completion of this 5–10 case experience base. Participants requesting relief before completion of the 5–10 case experience base will need to demonstrate that their approach to hazard, exposure, and risk screening is the functional equivalent of a 5–10 case experience base. The Agency may also make an exception with regards to the definition of ''successful'' for PMNs regulated only under TSCA section 5 exposure-based authority.

The Agency considered several factors when determining the number of successful new chemical cases needed to qualify for expedited review under this pilot project. Some stakeholders submit relatively few PMNs or exemption notices, e.g., some stakeholders submit one PMN every two to three years. Setting the number of successful new chemical cases at a level greater than 5–10 would mean that infrequent submittters of PMNs might take many years to reach the 5–10 PMN or exemption notice experience base. Some stakeholders submit many PMNs annually, e.g. 20 PMNs per year or more. In this case of a stakeholder submitting 20 PMNs or exemption notices per year, the experience base could be achieved in approximately six months. The Agency believes that 5–10 successful PMNs or exemption notices, or the functional equivalent, is a reasonable experience base to qualify for expedited review under this pilot project. The Agency will use its discretion when determining if and when a company has sufficient experience. For example, for a company whose PMN submissions have historically been limited in scope, e.g., PMNs submissions only for surfactants, 5 successful PMN submissions might be considered adequate for the Agency to judge that the submitter has effectively used the screening methodologies. On the other hand, a company with PMNs covering a wide spectrum of industrial chemistry might need to submit 10 successful PMNs to qualify. The Agency solicits comment on this issue.

If a pilot project participant's PMN or exemption submission is determined by EPA to be low hazard or low risk (meaning the submission is dropped from further review during the early stages of the PMN review process, i.e., first 30 days), and the participant submits descriptive information to demonstrate that chemical hazard and exposure screening models contributed to their decisions regarding the new chemical substance, this will likely be judged sufficient to demonstrate an ability (for that particular PMN or exemption submission) to effectively use the screening methodologies. All such decisions under the pilot are within the sole discretion of the Agency and no rights are extended by this pilot.

X. How Can Chemical Manufacturers Demonstrate Their Proficiency in Effective Use of Hazard and Exposure Screening Tools and Thereby Qualify for Expedited Review Under Section 5 of TSCA?

As mentioned in the previous section, in order to demonstrate proficiency in the use of the P2 Framework or other comparable hazard and exposure screening tools, companies would, following formal training, submit 5–10 PMNs, or functional equivalent, which were developed via application of these tools, and that EPA determines to be low hazard and/or low risk. This number of PMN cases are considered a sufficient sample to judge the adequacy and effectiveness of a company's use of the P2 Framework in the evaluation of PMNs prior to their submission to the Agency. Companies submitting PMNs under this pilot project (either as part of the initial qualifying process or in conjunction with TMEs upon successful completion of that process) may be asked to supplement their submissions, using page 11 (''Optional Pollution Prevention Information'') of the PMN form, with additional information which demonstrates the application of the P2 Framework and provide a basis for EPA to judge the application of the P2 Framework. See Unit IX. for more details on training and ''additional information.''

A chemical manufacturer, formulator, or import who has submitted 5–10 successful (i.e., not regulated by EPA) PMNs that EPA determines to be low hazard and/or low risk, or the functional equivalent and who is interested in participating in the pilot project should approach the Agency to request the expedited review under section 5 of TSCA described in Unit VI. This should be done by submitting in writing to the Director of the Chemical Control Division (address below), documentation of the following:

- The date of training completed in accordance with Unit IX.A.,
- A list of the PMNs which were submitted and the outcome of Agency review, i.e., the chemicals were not regulated,
- A summary table presenting the hazard and exposure screening tools used to evaluate each PMN substance, including identification of methods and models/tools used in the assessment, and
- An overall qualitative or quantitative assessment of the value of the use of hazard and exposure screening tools to evaluate these PMN substances (see Unit IX.B.).

Submitters are encouraged to submit nonconfidential reports to the extent possible. If necessary, check http://www.epa.gov/oppt/newchems/cbi.html for information on properly transmitting CBI material to EPA. A non-CBI or sanitized version of the information described above should be submitted to: Charles M. Auer, Acting Director, Chemical Control Division (7405M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001.

Upon review of this information, EPA will respond in writing to notify candidates of their eligibility for expedited review (i.e., being allowed to submit simultaneous TMEs and PMNs). Following EPA review of the PMNs submitted under the pilot during an approximately 2 year period starting from the date of this notice, the Agency can at its discretion extend the time period of this pilot project to gain additional experience, or conclude the pilot. EPA solicits comments on this overall approach.

XI. Will EPA Allow the Use of Other Hazard and Risk Screening Tools Besides the P2 Framework?

EPA understands that the P2 Framework is just one example of pollution prevention and chemical hazard, exposure, and risk screening tools that could be used to evaluate chemicals, in general and under this pilot project in particular. Although the Agency is aware that other assessment methodologies are widely available and that use of these other methods may be of value in identifying less risky or environmentally preferable alternatives, the Agency lacks experience with their use. The Agency will consider the applicability of other pollution prevention and chemical hazard, exposure, and risk screening tools, but PMN submissions for consideration under this pilot project should describe the alternate methodology used and the results obtained. To assist and improve EPA's understanding of other tools, the Agency may ask, where evaluations resulting from the P2 Framework and alternative methodologies differ in conclusions, that additional detail on the basis and underlying assumptions for these conclusions be provided.

XII. How Will the Agency Incorporate Other Information on Risk Reduction, Such as Control Technology, into this Pilot Project?

Although the Agency's primary goal in this pilot project is encouraging the use of chemical hazard identification and risk screening methods at R&D and the development of inherently low hazard chemicals, it is expected that for low-moderate hazard chemicals the information generated through use of the P2 Framework, and other methods, can also contribute to identification of exposure and risk reduction steps, through use of control technologies or other measures that can mitigate potential risks. Pilot project participants could apply the hazard and exposure screening tools and demonstrate the ability to use the information generated by the P2 Framework to identify opportunities to eliminate or control exposures through process controls, recycling, or reuse. Companies are encouraged under the pilot project to identify and apply control technology or other mitigation steps which results in low risk outcomes and to include discussion of this aspect in their PMN submissions.

XIII. What is the Relationship of Sustainable Futures to Project XL?

On September 14, 2000, the Agency signed Final Project Agreements (FPAs) with Eastman Kodak (Kodak, 2000; see Unit XV.5.) and PPG Industries (PPG 2000; see Unit XV.6.) under the Agency's XL Program, based on application of hazard and exposure screening tools in new product development. Project XL, which stands for ''eXcellence and Leadership,'' is a national program that allows state and local governments, businesses and federal facilities to develop with EPA innovative strategies to test better or more cost-effective ways of achieving environmental and public health protection. Under the FPAs, the Agency allows Kodak and PPG to simultaneously submit a TME and a PMN on a new chemical substance, thus enabling each company to begin manufacture of that new chemical substance in accordance with the TME after 45 days, provided the TME is granted and the PMN is dropped from further review during the first 30 days of the review period. Under both FPAs the companies propose to take other actions that go beyond compliance. See the Kodak or PPG FPAs at the Project XL web site for additional details: http://www.epa.gov/projectxl/. The Agency has worked very closely with both Kodak and PPG regarding use and interpretation of the P2 Framework in new product development. Both Kodak and PPG have participated in P2 Framework workshops, seminars and other training and outreach efforts. Both Kodak and PPG have used the P2 Framework to evaluate product alternatives and to inform their judgement regarding commercialization of environmentally preferable products.

Both PPG and Kodak have submitted well over 10 PMNs or PMN exemption notices that were developed using the P2 Framework. The Agency has dropped these PMNs because they either present a low inherent human health and environmental hazard, or in those cases where potential risks were identified, the companies were able to develop mitigation strategies which adequately reduced those potential risks. Because of these companies' demonstrated experience in the use of the P2 Framework in new product development, and their contribution to advancing excellence in environmental protection, as evidenced by their project XL proposals, Kodak and PPG will not need to submit the minimum ten PMNs (see Unit IX.) for review under the pilot project. Kodak and PPG have been eligible for the requested expedited review with the first complying new chemical submission received after signature of their respective FPAs.

XIV. What's Next After Completion of this Pilot Program?

As mentioned in Unit II., EPA will use the data and experience gained though this Sustainable Futures pilot project, and through related Project XL initiatives, to improve Agency understanding of how early hazard, exposure, and risk screening can lead to development of environmentally preferable products and processes, among other pollution prevention outcomes. Based on this experience, EPA may develop an exemption under section 5(h)(4) of TSCA to provide expedited review for low hazard/low risk PMNs that have been the subject of early hazard, exposure, and risk screening. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule to exempt the manufacturer or importer of new chemical substance from some or all of the provisions of section 5 of TSCA, if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of the substance will not present an unreasonable risk of injury to health or the environment. As described in Unit II., EPA has implemented other exemptions under section 5(h)(4) of TSCA and these may provide a model for any such future exemption.

XV. References

1. USEPA. 1986. New Chemical Information Bulletin: Exemptions for Research and Development and Test Marketing. Office of Toxic Substances, U.S. Environmental Protection Agency. (November, 1986) and at http://www.epa.gov/oppt/newchems/tmeranddbulletin.pdf.

2. USEPA. 2000. Pollution Prevention (P2) Framework. Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency (EPA-748-B-00-001; June, 2000) and at http://www.epa.gov/opptintr/p2framework/

3. Tellus Institute. 1999. Design for Competitive Advantage: The Business Benefits of the EPA Pollution Prevention Assessment Framework in New Product Development, by Thomas J. Votta and Allen L. White, Ph.D. Boston, MA; http://www.tellus.org (September 28, 1999).

4. Eastman Kodak Company. 1996. EPA-Developed Methodologies for Assessing the Fate and Hazards of Industrial Chemicals: A Summary of Eastman Kodak Company's Experience with Their Use and Applicability in Risk Assessment. Kodak Technology Transfer Team, Health and Environment Laboratories, Rochester, NY. (May 13, 1996).

5. Eastman Kodak Company. 2000. Kodak Pollution Prevention Framework Final Project Agreement (Draft, July, 2000) http://www.epa.gov/ProjectXL/kodak/fpakd7-21.pdf (http://www.epa.gov/ProjectXL/groupfrn.pdf for **Federal Register** notice of September 14, 2000 signing).

6. PPG Industries, Inc. 2000. PPG Industries, Inc. Pollution Prevention Framework Final Project Agreement, Project XL, September 14, 2000 http://www.epa.gov/ProjectXL/ppg/913fpa.pdf (http://www.epa.gov/ProjectXL/groupfrn.pdf for **Federal Register** notice of September 14, 2000 signing).

XVI. Statutory and Executive Order Reviews

This notice announces a voluntary pilot project to encourage the application of Pollution Prevention principles during the development of new chemicals under TSCA. Since this voluntary project does not include a regulation or otherwise require notice and comment and does not impose any new binding requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), or Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). For the same reason, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501*et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request as defined by the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

This document does not contain any new information collection requirements that would require additional OMB review and approval under the PRA. The information collection activities related to the submission of information pursuant to TSCA section 5 are already approved by OMB under OMB control number 2070-0012 (EPA ICR No. 574). The hours for respondent reporting burden for a full PMN submission is estimated to range between 95 and 114 hours, with an average respondent burden of 105 hours. This burden applies also to the submission of SNUN, LVE, and LoREX submissions since each of these notices requires the submission of a complete PMN form. The respondent burden for submission of a test market exemption is estimated to average 98 hours.

As defined by the PRA and 5 CFR 1320.3(b), ''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.

This action will not have substantial direct effects on State or tribal governments, on the relationship between the Federal government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal government and States or Indian tribes. As a result, no action is required under Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999), or under Executive Order 13175,

entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Nor does it impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

List of Subjects

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

Dated: November 27, 2002.

Stephen L. Johnson,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

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Federal Register

Vol. 67, No. 238

Wednesday, December 11, 2002

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Federal Register/Code of Federal Regulations	
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Executive orders and proclamations	**741–6000**
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FEDERAL REGISTER PAGES AND DATE, DECEMBER

71443–71796 2
71797–72088 3
72089–72362 4
72363–72550 5
72551–72826 6
72827–75798 9
75799–76102 10
76103–76292 11

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7631 72089
7632 72551
7633 76103
Administrative Orders:
Memorandums:
Memorandum of November 27, 2002 71795
Memorandum of November 6, 2002 75799
Presidential Determinations:
No. 2003–04 72363

7 CFR

718 71797
905 71798
989 71803
2200 76105
Proposed Rules:
246 71774

8 CFR

103 .....71443, 76256
212 71443
214 .....71443, 76256
235 71443
248 76256
264 71443
274a 76256
286 71443
299 71443

9 CFR

93 72827

10 CFR

Chapter 1 72091
431 72274
Proposed Rules:
50 71490

12 CFR

562 75809
Proposed Rules:
226 72618
701 72444
791 72113

13 CFR

Proposed Rules:
120 72622

14 CFR

21 72830
39 .....71450, 71452, 71455, 71808, 71810, 71812, 71814, 72091, 72553, 75809, 75812, 76106, 76109, 76111
71 .....71457, 71458, 71459, 71460, 71815, 72365, 72441
91 72830
97 .....71816, 72553
119 72726
121 .....72726, 72830
125 72830
129 .....72726, 72830
135 72726
183 72726
Proposed Rules:
23 71490
39 .....71493, 71495, 71497, 71500, 71503, 71505, 71904, 72115, 72119, 75819, 75822, 75824, 76120
71 .....71507, 71508, 71509, 71906, 75826
121 71908
255 72869
399 .....72396, 72869
1260 72121

15

50 72095

17 CFR

Proposed Rules:
205 71670
240 71909
270 71915

18 CFR

284 72098
Proposed Rules:
35 76122
284 72870

19 CFR

Proposed Rules:
101 71510
122 .....71510, 71512
123 71512

20 CFR

Proposed Rules:
604 72122

21 CFR

5 71461
16 71461
101 71461
336 72555
338 72555
341 72555
510 72365
520 .....71819, 72365
522 .....72366, 72367
556 72367
558 .....71820, 71821, 72368, 72369, 72370
Proposed Rules:
1020 76056

22 CFR

507 76112

23 CFR

627 75902
635 75902
636 75902
637 75902
710 75902

24 CFR

941 76096

25 CFR

Proposed Rules:
Ch. 1 75828

26 CFR

1 ....71821, 72274
Proposed Rules:
1 ....75899, 76123

27 CFR

9 72834

29 CFR

1611 72373
4011 71470
4022 71470
4044 71472
Proposed Rules:
1915 76214

30 CFR

915 72375
924 71826
948 71832

33 CFR

100 71840
117 ....71473, 71474, 71840, 72099, 72100, 72559, 72560, 76114, 76116
165 ....71475, 71840, 72561, 72840,
175 72100
177 72100
179 72100
181 72100
183 72100
Proposed Rules:
117 ....71513, 72126
52 76142
165 ....71513, 75831

34 CFR

200 71710

36 CFR

1200 72101
Proposed Rules:
219 ....72770, 72816

37 CFR

259 71477

38 CFR

21 72563

39 CFR

255 75814
501 71843
Proposed Rules:
111 72626

40 CFR

52 ....72379, 72573, 72574, 72576, 72579, 72842, 72844
61 72579
62 76116
63 ....72330, 72580
86 72821
70 71479
131 71843
141 73011–74047
142 73011–74047
180 ....71847, 72104, 72585, 72846
721 72854
1065 72724
Proposed Rules:
52 ....71515, 72874
62 76150
63 ....72276, 72875
86 72818
141 71520
300 72888
451 71523
764 71524
1610 72890

42 CFR

Proposed Rules:
73 71528
1001 ....72892, 72894
1003 72896

44 CFR

64 72593
65 71482

45 CFR

Proposed Rules:
31 72128

46 CFR

2 72100
10 72100
15 72100
24 72100
25 72100
26 72100
30 72100
70 72100
90 72100
114 72100
169 72100
175 72100
188 72100
199 72100

47 CFR

64 71861
73 ....71891, 71892, 71893, 71894
Proposed Rules:
2 75968
25 75968
73 ....71924, 71925, 71926
87 75968

48 CFR

Proposed Rules:
Ch. 10 76150

49 CFR

1 72383
241 75938
573 72384
577 72384
Proposed Rules:
171 72034
172 72034
173 72034
175 72034
176 72034
178 72034
180 72034
219 75966

50 CFR

17 76030
222 71895
223 71895
229 ....71900, 75817
300 ....72110, 72394
622 ....71901, 71902, 72112
635 71487
648 ....71488, 72867
679 ....71489, 72595
Proposed Rules:
17 ....71529, 72396, 72407, 75834, 76156
635 72629
648 72131

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 11, 2002

BROADCASTING BOARD OF GOVERNORS

Sunshine Act meetings; implementation; published 12-11-02

LABOR DEPARTMENT

Occupational Safety and Health Administration

Construction safety and health standards:

Signs, signals, and barricades; published 9-12-02

LOCAL TELEVISION LOAN GUARANTEE BOARD

Procedural rules; published 12-11-02

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 11-26-02

McDonnell Douglas; published 11-26-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Prunes (dried) produced in—

California; comments due by 12-16-02; published 10-15-02 [FR 02-26054]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic and foreign:

Mediterranean fruit fly; cold treatment of fruits; comments due by 12-16-02; published 10-15-02 [FR 02-26063]

COMMERCE DEPARTMENT

Economic Analysis Bureau

International services surveys:

BE-605, etc.; transactions of U.S. affiliate, except U.S. banking affiliate, with foreign parent, and transactions of U.S. affiliate with foreign parent; comments due by 12-16-02; published 10-16-02 [FR 02-26220]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic bluefin tuna; comments due by 12-18-02; published 11-18-02 [FR 02-29215]

Northeastern United States fisheries—

Atlantic herring; comments due by 12-16-02; published 11-15-02 [FR 02-29181]

West Coast States and Western Pacific fisheries—

Coastal pelagic species; comments due by 12-16-02; published 10-30-02 [FR 02-27613]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Energy-efficient standby power devices; comments due by 12-16-02; published 10-16-02 [FR 02-26243]

EDUCATION DEPARTMENT

Civil rights:

Boy Scouts of America Equal Access Act; comments due by 12-16-02; published 11-15-02 [FR 02-29037]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Electric arc furnaces and argon-oxygen decarburization vessels; comments due by 12-16-02; published 10-16-02 [FR 02-26303]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 12-20-02; published 11-20-02 [FR 02-29477]

Indiana; comments due by 12-20-02; published 11-20-02 [FR 02-29473]

Kentucky; comments due by 12-19-02; published 11-19-02 [FR 02-29180]

Pennsylvania; comments due by 12-16-02; published 11-14-02 [FR 02-28696]

Hazardous waste program authorizations:

Georgia; comments due by 12-19-02; published 11-19-02 [FR 02-29177]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Federal-State Joint Board on Universal Service—

Non-rural high-cost support mechanism; comments due by 12-20-02; published 11-29-02 [FR 02-30164]

Wireless telecommunications services—

71-76 GHz, 81-86 GHz, and 92-95 GHz bands allocations and service rules; comments due by 12-18-02; published 9-19-02 [FR 02-23426]

Radio stations; table of assignments:

Arkansas and Utah; comments due by 12-16-02; published 11-19-02 [FR 02-29236]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Energy-efficient standby power devices; comments due by 12-16-02; published 10-16-02 [FR 02-26243]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

Soluble dietary fiber and coronary heart disease; health claims; comments due by 12-16-02; published 10-2-02 [FR 02-25067]

Trans fatty acids in nutrition labeling, nutrient content claims, and health claims; comments due by 12-16-02; published 11-15-02 [FR 02-29096]

Medical devices:

General hospital and personal use devices—

Medical washer and medical washer-disinfector; classification; comments due by 12-16-02; published 11-15-02 [FR 02-28942]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

California tiger salamander (Sonoma County distinct population segment); comments due by 12-16-02; published 10-31-02 [FR 02-27650]

Critical habitat designations—

Mariana fruit bat, etc., from Guam and Northern Mariana Islands; comments due by 12-16-02; published 10-15-02 [FR 02-25649]

Fishery conservation and management:

Critical habitat designations—

Kauai cave wolf spider and cave amphipod; comments due by 12-16-02; published 11-15-02 [FR 02-29048]

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright office and procedures:

Prohibition to circumvention of copyright protection systems for access control technologies; exemption; comments due by 12-18-02; published 10-15-02 [FR 02-26183]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Energy-efficient standby power devices; comments due by 12-16-02; published 10-16-02 [FR 02-26243]

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:

Leyse, Robert H.; comments due by 12-16-02; published 10-31-02 [FR 02-27700]

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 12-20-02; published 11-20-02 [FR 02-29486]

POSTAL SERVICE

Domestic Mail Manual:

Bound printed matter; flat-size mail co-packaging, co-sacking, and higher DDU rate minimum rate; comments due by 12-19-02; published 11-19-02 [FR 02-29340]

SECURITIES AND EXCHANGE COMMISSION

Securities:

Sarbanes-Oxley Act of 2002; implementation—
Attorneys; professional conduct standards; implementation; comments due by 12-18-02; published 12-2-02 [FR 02-30035]
Pension fund blackout periods; insider trades restriction; comments due by 12-16-02; published 11-15-02 [FR 02-28869]

SMALL BUSINESS ADMINISTRATION

Disaster loan program:
Disaster Mitigation Act of 2000; comments due by 12-20-02; published 10-21-02 [FR 02-26403]

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
Louisiana; comments due by 12-20-02; published 10-21-02 [FR 02-26718]
Vocational rehabilitation and education:
Great Lakes Maritime Academy—
Graduate eligibility for third-mate licenses; comments due by 12-17-02; published 10-18-02 [FR 02-26463]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:
Robinson model R-22 or R-44 helicopters; pilot training and experience requirements; comments due by 12-16-02; published 11-14-02 [FR 02-28963]
Airworthiness directives:
Agusta S.p.A.; comments due by 12-16-02; published 10-16-02 [FR 02-26071]
Airbus; comments due by 12-16-02; published 11-21-02 [FR 02-29679]
Bell; comments due by 12-16-02; published 11-14-02 [FR 02-28859]
Bell Helicopter Textron Canada Limited; comments due by 12-17-02; published 10-18-02 [FR 02-26593]
Fairchild; comments due by 12-16-02; published 10-15-02 [FR 02-26053]
Gulfstream; comments due by 12-16-02; published 10-16-02 [FR 02-26208]
Hartzell Propeller Inc.; comments due by 12-17-02; published 10-18-02 [FR 02-26588]
Piaggio Aero Industries S.p.A.; comments due by 12-16-02; published 11-13-02 [FR 02-28750]
Rolls-Royce Corp.; comments due by 12-17-02; published 10-18-02 [FR 02-26587]
Saab; comments due by 12-18-02; published 11-18-02 [FR 02-29116]
Class E airspace; comments due by 12-19-02; published 11-13-02 [FR 02-28831]
Class E2 and E4 airspace; correction; comments due by 12-15-02; published 11-13-02 [FR 02-28832]

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:
Seneca Lake, NY; comments due by 12-20-02; published 10-21-02 [FR 02-26678]
Temecula, Riverside County, CA; name change; comments due by 12-20-02; published 10-21-02 [FR 02-26677]

TREASURY DEPARTMENT

Customs Service

Customs brokers:
Customs business performance by parent and subsidiary corporations; comments due by 12-16-02; published 10-15-02 [FR 02-26039]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Currency dealers and exchangers; suspicious transactions reporting requirements; comments due by 12-16-02; published 10-17-02 [FR 02-26364]
Insurance companies; suspicious transactions reporting requirements; comments due by 12-16-02; published 10-17-02 [FR 02-26365]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.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.

S. 1240/P.L. 107–329

To provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, and for other purposes. (Dec. 6, 2002; 116 Stat. 2815)

S. 2237/P.L. 107–330

Veterans Benefits Act of 2002 (Dec. 6, 2002; 116 Stat. 2820)

Last List December 9, 2002

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