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Contents

Federal Register

Vol. 68, No. 157

Thursday, August 14, 2003

Agricultural Marketing Service
RULES
Onions grown in—
Idaho and Oregon, 48529–48531
PROPOSED RULES
Hops produced in—
Various States, 48575
Regulatory Flexibility Act:
Periodic review of regulations; plan, 48574–48575
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48594–48595

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
NOTICES
Reports and guidance documents; availability, etc.:
Hass avocado fruit importation from Mexico; pest risk analysis, 48595–48596

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
Guyana Ministry of Health, 48611
Tanzania; youth and young adult-focused HIV and STD prevention activities expansion, 48611–48614

Chemical Safety and Hazard Investigation Board
NOTICES
Reports and guidance documents; availability, etc.:
Information disseminated by Federal agencies; quality, objectivity, utility, and integrity guidelines, 48599

Coast Guard
RULES
Ports and waterways safety:
Long Beach, CA; safety zone, 48555–48557
Regattas and marine parades:
Atlantic City Salutes 100th Anniversary of Powered Flight, 48553–48555

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
RULES
Reports by traders:
Statement of reporting trader; CFR correction, 48549

Comptroller of the Currency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48661–48663

Corporation for National and Community Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48601–48602

Defense Department
See Engineers Corps
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 48602–48603

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Assistive Technology Act Technical Assistance Program, 48739–48761

Employee Benefits Security Administration
NOTICES
Employee benefit plans; individual exemptions:
Deutsche Bank AG et al., 48637–48642

Employment and Training Administration
NOTICES
Adjustment assistance:
Alaska Commercial Fisheries Entry Commission; Permit No. S)4K61830V (Kodiak, AK) et al., 48642–48644
Ceodeux, Inc., 48644
Fisher Controls International, LLC, 48644
Fishing Vessel LOON, 48644
General Electric Co., 48644
Premcor Refining Group, Inc., et al., 48645–48646
Sanmina-SCI Corp., 48646
Stanek Tool Corp., 48646–48647
Stopfill, Inc., 48647
Takata Petri, Inc., 48647
Terry Apparel et al., 48647–48648

Energy Department
See Federal Energy Regulatory Commission
RULES
Federal claims collection, 48531–48543
PROPOSED RULES
Federal claims collection, 48575–48576

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Raritan Bay and Sandy Hook Bay, NJ—
Combined erosion and storm damage reduction project; correction, 48666

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
On-board diagnostic regulations; partially withdrawn, 48561–48562
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Kentucky, 48558–48561

Air quality implementation plans; approval and promulgation; various States:
Georgia; correction, 48557–48558
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Kentucky, 48581
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48605–48607
Meetings:
Environmental Policy and Technology National Advisory Council, 48607

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 48546–48549
Pratt & Whitney Canada, 48544–48546
Federal Tort Claims Act; administrative claims:
Claim presentation; CFR correction, 48543
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 48576–48579
Restricted areas, 48579–48581
NOTICES
Inventions, Government-owned; availability for licensing, 48658
Technical standard orders:
Extended squitter automatic dependent surveillance-broadcast and traffic information service-broadcast equipment operating at 1090 MHz, 48658–48659

Federal Communications Commission
RULES
Radio broadcast services:
Biennial review of broadcast ownership rules, 48763–48764
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48607–48610
Radio broadcast services:
Biennial review of broadcast ownership rules; application forms and certain non-form filings; information collection approval, 48764–48765

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48661–48663
Meetings; Sunshine Act, 48610

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Hardee Power Partners, Ltd., et al., 48603–48605

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48661–48663
Banks and bank holding companies:
Permissible nonbanking activities, 48610
Meetings; Sunshine Act, 48610

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 48610

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Mussels in Mobile River Basin, AL, 48581–48583
Hunting and fishing:
Refuge-specific regulations, 48583–48592
NOTICES
Endangered and threatened species:
Incidental take permits—
Solano County, CA; valley elderberry longhorn beetle, 48617–48618
Recovery plans—
Kneeland Prairie penny-cress, 48618
Environmental statements; availability, etc.:
Survival enhancement permits—
White River spinedace, White Pines County, NV; safe harbor agreement, 48618–48619

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48614
Meetings:
Pharmaceutical Science Advisory Committee, 48614

Forest Service
NOTICES
Environmental statements; notice of intent:
Okanogan and Wenatchee National Forests, WA, 48596–48598
Meetings:
Black Hills National Forest Advisory Board, 48598
Resource Advisory Committees—
Lincoln County, 48598
Shasta County, 48598

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 48602–48603

Geological Survey
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48620

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard

Indian Affairs Bureau
RULES
Lands and water:
Indian Reservation Roads Program funds; distribution, 48549–48553

Interior Department
See Fish and Wildlife Service

See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Reclamation Bureau

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48663–48664

International Trade Administration
NOTICES
Countervailing duties:
Pasta from—
Italy, 48599–48601

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Public land orders:
Idaho, 48620
Michigan, 48620–48621
New Mexico, 48621

Mine Safety and Health Administration
PROPOSED RULES
Metal and nonmetal mine safety and health:
Underground mines—
Diesel particulate matter exposure of miners, 48667–48721

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 48602–48603

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Bus emergency exits and window retention and release; CFR correction, 48572

National Institutes of Health
NOTICES
Meetings:
National Eye Institute, 48614–48615
National Human Genome Research Institute, 48615
National Institute of Mental Health, 48616–48617
National Institute of Neurological Disorders and Stroke, 48616
National Institute on Deafness and Other Communication Disorders, 48616
National Institute on Drug Abuse, 48615

National Oceanic and Atmospheric Administration
RULES
International fisheries regulations:
Pacific halibut—
Oregon sport fisheries; additional access, 48572–48573
PROPOSED RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico shrimp, 48592–48593
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48601

National Park Service
NOTICES
Environmental statements; availability, etc.:
Gauley River National Recreation Area, WV; Excel Energy, Inc. plan of operations, 48621
Pictured Rocks National Lakeshore, MI; general management plan, 48622
Meetings:
Great Sand Dunes National Park Advisory Council, 48622
Native American human remains, funerary objects; inventory, repatriation, etc.:
Fort Polk Military Reservation, Ft. Polk, LA, 48623–48624
Museum of Northern Arizona, Flagstaff, AZ, 48624–48625
Oregon State Museum of Anthropology, Eugene, OR, 48625–48626
Peabody Museum of Archaeology and Ethnology, Cambridge, MA, 48626–48634
State University of West Georgia, Carrollton, GA, 48623

Nuclear Waste Technical Review Board
NOTICES
Meetings:
Yucca Mountain, NV, 48648–48649

Occupational Safety and Health Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Occupational Safety and Health Maritime Advisory Committee, 48648

Office of United States Trade Representative
See Trade Representative, Office of United States

Postal Service
NOTICES
Meetings; Sunshine Act, 48649

Reclamation Bureau
NOTICES
Environmental statements; notice of intent:
Lake Curry Water Supply Project, Napa and Solano Counties, CA, 48634–48636

Research and Special Programs Administration
RULES
Hazardous materials:
Miscellaneous amendments, 48562–48572
NOTICES
Meetings:
Pipeline safety—
Public awareness programs for pipeline operators; workshops, 48659–48660

Rural Utilities Service
NOTICES
Environmental statements; availability, etc.:
Georgia Transmission Corp., 48598–48599

Securities and Exchange Commission
PROPOSED RULES
Securities:
Security holders and boards of directors; nominating committee functions and communications; disclosure requirements, 48723–48738
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48649–48650
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 48650–48652
Depository Trust Co., 48652–48653
National Association of Securities Dealers, Inc., 48653–48656

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Dun and Bradstreet Data Universal Numbering System; 2004 FY Educational and Cultural Affairs Bureau application requirements, 48656–48657
Meetings:
Shipping Coordinating Committee, 48657

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Carolina Coastal Railway, Inc., 48660–48661

Thrift Supervision Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48661–48663

Trade Representative, Office of United States
NOTICES
Andean Trade Promotion and Drug Eradication Act: 2003 annual review, 48657–48658

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
See Thrift Supervision Office

Veterans Affairs Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48665
Reports and guidance documents; availability, etc.:
Cemeteries and Memorials Advisory Committee; 2001-2002 FY report, 48665

Separate Parts In This Issue

Part II
Labor Department, Mine Safety and Health Administration, 48667–48721

Part III
Securities and Exchange Commission, 48723–48738

Part IV
Education Department, 48739–48761

Part V
Federal Communications Commission, 48763–48765

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.

7 CFR
958 48529
Proposed Rules:
Ch. I 48574
Ch. IX 48574
Ch. X 48574
Ch. XI 48574
991 48575

10 CFR
1015 48531
1018 48531
Proposed Rules:
1015 48575
1018 48575

14 CFR
15 48543
39 (2 documents) 48544, 48546
Proposed Rules:
39 48576
73 48579

17 CFR
18 48549
Proposed Rules:
240 48724

25 CFR
170 48549

30 CFR
Proposed Rules:
57 48668

33 CFR
100 48553
165 48555

40 CFR
52 48557
62 48558
86 48561
Proposed Rules:
62 48581

47 CFR
73 48764

49 CFR
171 48562
172 48562
173 48562
177 48562
178 48562
179 48562
180 48562
571 48571

50 CFR
300 48572
Proposed Rules:
17 48581
32 48583
622 48592

Rules and Regulations

Federal Register
Vol. 68, No. 157
Thursday, August 14, 2003

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV03–958–01 FR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Increased Assessment Rate and Defined Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) for the 2003–2004 and subsequent fiscal periods from $0.08 to $0.095 per hundredweight of onions handled, and establishes, in the regulatory text, the Committee's fiscal period beginning July 1 of each year and ending June 30 of the following year. The Committee locally administers the marketing order that regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 15, 2003.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Ave., suite 385, Portland, OR 97204; Phone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Idaho-Eastern Oregon onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning on July 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Committee for the 2003–2004 and subsequent fiscal periods from $0.08 to $0.095 per hundredweight of onions handled, and establishes, in the regulatory text, the Committee's fiscal period. The fiscal period begins July 1 of each year and ends June 30 of the following year.

The order provides authority for the Committee, with the approval of USDA, to establish a fiscal period. The Committee has operated under a fiscal period of July 1 through June 30 since its inception in the late 1950's, but this period has never been specified in the regulatory text. This rule adds to the order's rules and regulations a definition of the Committee's fiscal period. The fiscal period will be defined to be the 12-month period beginning July 1 and ending June 30 of the following year, both dates inclusive.

The order also provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members, four handler members and one public member. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–2001 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on April 3, 2003, and in a vote of seven in favor, one against, and one abstention, recommended an assessment rate of $0.095 per hundredweight of onions handled. The assessment rate of $0.095 is $0.015 higher than the rate currently

in effect. The order authorizes the Committee to establish an operating reserve of up to one fiscal period's operational expense. However, the Committee has maintained the operating reserve at a level of approximately one-half of one fiscal period's operational expenses. The Committee, over the last four fiscal periods, has reduced its operating reserve to this level. The Committee recommended the $0.015 increase so the total of assessment income ($870,200), contributions ($79,800), interest income ($6,000), and other income ($1,000) will equal the recommended expenses for 2003–2004 of $957,000. With these revenue sources, the Committee will not need to access its operating reserve and will maintain the reserve at the current level.

The Committee met on June 12, 2003, and unanimously recommended 2003–2004 expenditures of $957,000. In comparison, last year's budgeted expenditures were $1,044,824. The major expenditures for the 2003–2004 fiscal period include $10,000 for committee expenses, $148,353 for salary expenses, $72,610 for travel/office expenses, $59,170 for research expenses, $27,250 for export expenses, $589,617 for promotion expenses, and $50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2002–2003 were $10,000, $143,814, $77,460, $59,550, $54,000, $675,000, and $25,000, respectively.

The Committee estimates that onion shipments for the 2003–2004 fiscal period will be approximately 9,160,000 hundredweight, which should provide $870,200 in assessment income. Income derived from handler assessments, along with contributions ($79,800), interest income ($6,000), and other income ($1,000) will equal expenses. The Committee estimates that its operating reserve will be approximately $434,303 at the beginning of the 2003–2004 fiscal period. Funds in the reserve will be kept within the maximum permitted by the order of approximately one fiscal year's operational expenses (§ 958.44).

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 37 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 250 onion producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are defined as those having annual receipts less than $750,000.

The Committee estimates that 32 of the 37 handlers of Idaho-Eastern Oregon onions ship under $5,000,000 worth of onions on an annual basis. According to the ''Vegetables 2002 Summary'' reported by the National Agricultural Statistics Service, the total farm gate value of onions in the regulated production area for 2002 was $93,807,000. Therefore, the 2002 average gross revenue for an onion producer in the regulated production area was $375,228. Based on this information, it can be concluded that the majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities.

This rule establishes, in the regulatory text, the Committee's fiscal period beginning July 1 of each year and ending June 30 of the following year, and increases the assessment rate established for the Committee for the 2003–2004 and subsequent fiscal periods from $0.08 to $0.095 per hundredweight of onions handled. The Committee recommended an assessment rate of $0.095 per hundredweight, which is $0.015 higher than the rate currently in effect. The quantity of assessable onions for the 2003–2004 fiscal period is estimated at 9,160,000 hundredweight. Thus, the $0.095 rate should provide $870,200 in assessment income, which along with anticipated contributions, interest income, and other income will cover budgeted expenses expected to total about $957,000.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $10,000 for committee expenses, $148,353 for salary expenses, $72,610 for travel/office expenses, $59,170 for research expenses, $27,250 for export expenses, $589,617 for promotion expenses, and $50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2002–2003 were $10,000, $143,814, $77,460, $59,550, $54,000, $675,000, and $25,000, respectively.

The Committee reviewed and unanimously recommended 2003–2004 expenditures of $957,000. This budget increases the budget line items for salary expenses and marketing order contingencies, and decreases the budget line items for travel and office expenses, research expenses, export expenses, and promotion expenses. Prior to arriving at this budget, the Committee considered information from various sources, including the Idaho-Eastern Oregon Onion Executive, Research, Export, and Promotion Committees. These subcommittees discussed alternative expenditure levels, based upon the relative value of various research and promotion projects to the Idaho-Eastern Oregon onion industry. The assessment rate of $0.095 per hundredweight of assessable onions was then determined by taking into consideration the estimated level of assessable shipments, other revenue sources, and the Committee's goal of not having to use reserve funds during 2003–2004.

A review of historical information and preliminary information pertaining to the upcoming shipping season indicates that the producer price for the 2003–2004 season could be about $5.00 per hundredweight. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could be about 1.9 percent.

This rule increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal

and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the April 3, and the June 12, 2003, meetings were open to the public and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Idaho-Eastern Oregon onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

A proposed rule concerning this action was published in the **Federal Register** on July 9, 2003 (68 FR 40815). A copy of the rule was provided to Committee staff, who in turn made it available to onion producers, handlers, and other interested persons. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending July 24, 2003, was provided to allow interested persons to respond to the proposal. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–2004 fiscal period began on July 1, 2003, and the order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period. In addition, the Committee needs sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 958

Onions, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

■ 1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 958.112 is added to read as follows:

§ 958.112 Fiscal period.

The fiscal period shall begin July 1 of each year and end June 30 of the following year, both dates inclusive.

■ 3. Section 958.240 is revised to read as follows:

§ 958.240 Assessment rate.

On and after July 1, 2003, an assessment rate of $0.095 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: August 8, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–20691 Filed 8–13–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Parts 1015 and 1018

RIN 1901–AA98

Collection of Claims Owed the United States

AGENCY: Department of Energy.

ACTION: Direct final rule.

SUMMARY: This direct final rule adopts revisions to the regulations on Collection of Claims Owed the United States to conform to the Federal Claims Collection Standards issued by the Department of the Treasury and the Department of Justice. The revisions clarify and simplify the Department of Energy's debt collection standards and reflect changes to Federal debt collection procedures that were made by the Debt Collection Improvement Act of 1996 and the General Accounting Office Act of 1996.

DATES: This direct final rule will be effective November 12, 2003 without further action, unless significant adverse comment is received by September 15, 2003. If significant adverse comment is received, the Department will publish a timely withdrawal of the rule in the **Federal Register**. (*See also* ''Discussion of Direct Final Rulemaking'' in Section III of the **SUPPLEMENTARY INFORMATION** section of this notice.)

ADDRESSES: All comments should be addressed to Helen O. Sherman, Director, Office of Finance and Accounting Policy (ME–10); Office of Management, Budget and Evaluation, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Philip R. Pegnato, Team Leader, Management Accounting and Cash Management Team, U.S. Department of Energy, at (301) 903–9704; or Susan A. Donahue, Accountant, Management Accounting and Cash Management Team, U.S. Department of Energy, at (301) 903–4666.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy (DOE) today revises and consolidates its debt collection regulations that are codified at 10 CFR parts 1015 and 1018. The principal purpose of this rulemaking is to conform DOE's regulations to the government-wide debt collection regulations that were published by the Treasury and Justice Departments (65 FR 70390, November 22, 2000). Consistent with that purpose, today's revised regulations largely track the wording of the government-wide regulations. Any significant differences are discussed below. The Secretary of Energy has approved the revised regulations for application to all divisions of DOE including the National Nuclear Security Administration.

More specifically, this rulemaking is intended:

(a) To reflect changes to Federal debt collection procedures made by the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (April 26, 1996) as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996; and the publication of the revised Federal

Claims Collection Standards (FCCS) under new chapter IX, Title 31, Code of Federal Regulations (65 FR 70390, November 22, 2000) by the Department of the Treasury (Treasury) and the Department of Justice (DOJ).

(b) To reflect the detailed guidance issued by Treasury and codified at 31 CFR part 285, Debt Collection Authorities under the DCIA. See, *e.g.*, Offset of Tax Refund Payments to Collect Past-Due, Legally Enforceable Non-Tax Debt (63 FR 46140, Aug. 28, 1998); Offset of Federal Benefit Payments to Collect Past-Due, Legally Enforceable Non-Tax Debt (63 FR 71204, Dec. 23, 1998); Salary Offset (63 FR 23354, Apr. 28, 1998); Administrative Wage Garnishment (65 FR 51867, Oct. 11, 2001); Transfer of Debts to Treasury for Collection (64 FR 22906, Apr. 28, 1999); Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees (63 FR 67754, Dec. 8, 1998).

(c) To incorporate 10 CFR part 1018, Referral of Debts to IRS for Tax Refund Offset, into 10 CFR part 1015, Collection of Claims Owed the United States.

II. Discussion of Direct Final Rule

Revised 10 CFR part 1015 includes the following major changes from DOE's existing regulations:

(1) The content of 10 CFR part 1018, Referral of Debts to IRS for Tax Refund Offset, was merged into 10 CFR part 1015.

(2) The revised 10 CFR part 1015 reflects the elimination of the Comptroller General's role in Federal debt collection.

(3) The revised 10 CFR part 1015 reflects the requirement that DOE use government-wide debt collection contracts (with certain exceptions) for referrals to private collection contractors.

(4) The revised 10 CFR part 1015 contains a new requirement that DOE and debtors exchange mutual releases of non-tax liabilities in all appropriate instances when a claim is compromised.

(5) The revised 10 CFR part 1015 reflects the increase in the principal claim amount from up to $20,000 to up to $100,000, or such other amount as the Attorney General may direct, that DOE is authorized to compromise or to suspend or terminate collection activity thereon, without concurrence by the DOJ. In addition, the minimum amount of a claim that may be referred to the DOJ is increased from $600 to $2,500, or such other amount as the Attorney General may direct. The circumstances under which the DOJ will litigate when the claim amount does not meet the minimum threshold have not been changed.

(6) The revised 10 CFR part 1015 reflects several new debt collection procedures under the DCIA, including, but not limited to:

(a) The Treasury Regulations provide that agencies shall set forth in their regulations the circumstances under which interest and related charges will not be imposed for periods during which collection activity has been suspended pending agency review. The revised 10 CFR 1015.212(h) provides that when a debtor requests a waiver or review of the debt, DOE will continue to accrue interest, penalties and administrative costs during the period collection activity is suspended. Upon completion of DOE's review, interest, penalties and administrative costs related to the portion of the debt found to be without merit will be waived;

(b) Transfer or referral of delinquent debt to Treasury or Treasury-designated debt collection centers for collection, known as ''cross-servicing'';

(c) Mandatory credit bureau reporting, and;

(d) Mandatory prohibition against extending Federal financial assistance in the form of a loan or loan guarantee to delinquent debtors.

(7) The revised 10 CFR part 1015 requires one demand letter before taking appropriate collection actions. Previously DOE required three letters before taking further collection action.

(8) A section on cost analysis has been added to 10 CFR 1015.212, Interest, penalties and administrative costs. This section ensures that the most cost effective alternative collection techniques are used with respect to the extensiveness of collection efforts, the evaluation of offers of compromise, and the establishment of minimum debt amounts below which collection efforts need not be taken.

(9) A new § 1015.207, Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges, has been added.

III. Discussion of Direct Final Rulemaking

DOE is publishing this final rule without prior proposal because we view this as a noncontroversial amendment and anticipate no significant adverse comment. This rulemaking merely conforms DOE's regulations on debt collection to Treasury and DOJ standards and to procedures required by statute. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to amend 10 CFR part 1015 if significant adverse comment is filed. This rule will be effective on November 12, 2003 without further notice unless we receive significant adverse comment by September 15, 2003. If DOE receives such an adverse comment on one or more distinct amendments, paragraphs, or sections of this direct final rule, DOE will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of today's direct final rule for which we do not receive significant adverse comment will become effective on the date set forth in this direct final rule, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule. If significant adverse comment is received, we will address all public comments in a subsequent final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Regulatory Analysis

A. Executive Order 12866

Today's regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of OMB.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule amends 10 CFR part 1015 to incorporate revisions to the Federal Claims Collection Standards issued by Treasury and DOJ and to reflect changes to Federal debt collection procedures made by the Debt Collection Improvement Act of 1996 and the General Accounting Office Act of 1996. Most of the rule provisions relate to agency management and procedure or are stated as policy statements. This rule contains few, if any, new substantive requirements that directly apply to members of the public. Any incremental economic impact of this rule on small entities would be small. For these reasons, DOE certifies that this direct final rule will not have a significant

economic impact on a substantial number of small entities. Accordingly, DOE did not prepare a regulatory flexibility analysis for the rule.

C. Paperwork Reduction Act

No new collection of information is imposed by this direct final rule. Accordingly, no clearance by OMB is required under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*). Specifically, this rule deals only with agency procedures and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The rule published today does not contain any Federal mandate; therefore, these requirements do not apply.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rulemaking is not subject to a requirement to propose for public comment, and section 654 therefore does not apply.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guideline issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under the Small Business Regulatory Enforcement Fairness Act

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

10 CFR Part 1015

Administrative practice and procedure, Antitrust, Claims, Federal employees, Fraud penalties, Privacy.

10 CFR Part 1018

Claims, Income taxes.

Issued in Washington, DC, on August 6, 2003.

James T. Campbell,

Acting Director, Office of Management, Budget and Evaluation/Acting Chief Financial Officer.

■ For the reasons set out in the preamble, DOE hereby amends title 10 of the Code of Federal Regulations as follows:

PART 1015—COLLECTION OF CLAIMS OWED THE UNITED STATES

■ 1. Part 1015 is revised to read as follows:

PART 1015—COLLECTION OF CLAIMS OWED THE UNITED STATES

Subpart A—General

Sec.

1015.100 Scope.
1015.101 Prescription of standards.
1015.102 Definitions and construction.
1015.103 Antitrust, fraud, tax, interagency, transportation account audit, acquisition contract, and financial assistance instrument claims excluded.
1015.104 Compromise, waiver, or disposition under other statutes not precluded.
1015.105 Form of payment.
1015.106 Subdivision of claims not authorized.

1015.107 Required administrative proceedings.
1015.108 No private rights created.

Subpart B—Standards for the Administrative Collection of Claims.

1015.200 Scope.
1015.201 Aggressive agency collection activity.
1015.202 Demand for payment.
1015.203 Collection by administrative offset.
1015.204 Reporting debts.
1015.205 Credit reports.
1015.206 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.
1015.207 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.
1015.208 Administrative wage garnishment.
1015.209 Tax refund offset.
1015.210 Liquidation of collateral.
1015.211 Collection in installments.
1015.212 Interest, penalties, and administrative costs.
1015.213 Analysis of costs.
1015.214 Use and disclosure of mailing addresses.
1015.215 Federal salary offset.
1015.216 Exemptions.

Subpart C—Standards for Compromise of Claims.

1015.300 Scope.
1015.301 Scope and application.
1015.302 Bases for compromise.
1015.303 Enforcement policy.
1015.304 Joint and several liability.
1015.305 Further review of compromise offers.
1015.306 Consideration of tax consequences to the Government.
1015.307 Mutual releases of the debtor and the Government.

Subpart D—Standards for Suspending or Terminating Collection Activity.

1015.400 Scope.
1015.401 Scope and application.
1015.402 Suspension of collection activity.
1015.403 Termination of collection activity.
1015.404 Exception to termination.
1015.405 Disharge of indebtedness; reporting requirements.

Subpart E—Referrals to the Department of Justice.

1015.500 Scope.
1015.501 Referrals to the Department of Justice and the Department of the Treasury's Cross-Servicing Program.
1015.502 Prompt referral.
1015.503 Claims Collection Litigation Report.
1015.504 Preservation of evidence.
1015.505 Minimum amount of referrals to the Department of Justice.

Authority: 31 U.S.C. 3701, 3711, 3716, 3717, 3718, and 3720B; 42 U.S.C. 2201 and 7101, *et seq.*; 50 U.S.C. 2401 *et seq.*

Subpart A—General

§ 1015.100 Scope.

This subpart describes the scope of the standards set forth in this part. This subpart corresponds to 31 CFR part 900 in the Department of the Treasury (Treasury) Federal Claims Collection Standards.

§ 1015.101 Prescription of standards.

(a) The Secretary of the Treasury and the Attorney General of the United States issued regulations in 31 CFR parts 900–904, under the authority contained in 31 U.S.C. 3711(d)(2). Those regulations prescribe standards for Federal agency use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific Federal agency statutes or regulations apply to such activities or, as provided for by Title 11 of the United States Code, when the claims involve bankruptcy. The regulations in 31 CFR parts 900–904 also prescribe standards for referring debts to the Department of Justice (DOJ) for litigation. Additional guidance is contained in the Office of Management and Budget's (OMB) Circular A–129 (Revised), ''Policies for Federal Credit Programs and Non-Tax Receivables,'' the Treasury's ''Managing Federal Receivables,'' and other publications concerning debt collection and debt management. These publications are available from the Department of Energy (DOE) Office of Financial Policy, 1000 Independence Ave., SW., Washington, DC 20585.

(b) Additional rules governing centralized administrative offset and the transfer of delinquent debt to Treasury or Treasury-designated debt collection centers for collection (cross-servicing) under the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (April 26, 1996), are set forth in separate regulations issued by Treasury. Rules governing the use of certain debt collection tools created under the DCIA, such as administrative wage garnishment, also are set forth in separate regulations issued by Treasury. See generally, 31 CFR part 285.

(c) DOE is not limited to the remedies contained in this part and may use any other authorized remedies, including alternative dispute resolution and arbitration, to collect civil claims, to the extent that such remedies are not inconsistent with the Federal Claims Collection Act, as amended, Public Law 89–508, 80 Stat. 308 (July 19, 1966), the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (October 25, 1982), the DCIA or other relevant law. The regulations in this part do not impair DOE's common law rights to collect debts.

(d) Standards and policies regarding the classification of debt for accounting purposes (for example, write-off of uncollectible debt) are contained in OMB's Circular A–129 (Revised), ''Policies for Federal Credit Programs and Non-Tax Receivables.''

§ 1015.102 Definitions and construction.

(a) For the purposes of the standards in this part, the terms ''claim'' and ''debt'' are synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms ''claim'' and ''debt'' include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(b) A debt is ''delinquent'' if it has not been paid by the date specified in DOE's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(c) In this part, words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms ''includes'' and ''including'' do not exclude matters not listed but do include matters that are in the same general class.

(d) Recoupment is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

(e) The term ''Department of Energy'' or ''DOE'' includes the National Nuclear Security Administration.

§ 1015.103 Antitrust, fraud, tax, interagency, transportation account audit, acquisition contract, and financial assistance instrument claims excluded.

(a) The standards in this part relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of the antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Only the DOJ has the

authority to compromise, suspend, or terminate collection activity on such claims. The standards in this part relating to the administrative collection of claims do apply, but only to the extent authorized by the DOJ in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, DOE will promptly refer the case to the DOJ for action. At its discretion, the DOJ may return the claim to DOE for further handling in accordance with the standards in this part.

(b) Part 1015 does not apply to tax debts.

(c) Part 1015 does not apply to claims between Federal agencies. Federal agencies should attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1980 Comp., pp. 409–412).

(d) Part 1015 does not apply to claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 which shall be determined, collected, compromised, terminated, or settled in accordance with regulations published under the authority of 31 U.S.C. 3726 (*see* 41 CFR parts 101–141, administered by the Director, Office of Transportation Audits, General Services Administration) and are otherwise excepted from these regulations.

(e)(1) Part 1015 does not apply to claims arising out of acquisition contracts, subcontracts, and purchase orders which are subject to the Federal Acquisition Regulations System, including the Federal Acquisition Regulation, 48 CFR subpart 32.6, and the Department of Energy Acquisition Regulation, 48 CFR subpart 932.6, and which shall be determined or settled in accordance with those regulations; and

(2) Part 1015 does not apply to claims arising out of financial assistance instruments (*e.g.*, grants, cooperative agreements, and contracts under cooperative agreements) and loans and loan guarantees, which shall be determined or settled in accordance with 10 CFR 600.26 and 10 CFR 600.112(f).

§ 1015.104 Compromise, waiver, or disposition under other statutes not precluded.

Nothing in this part precludes DOE from disposing of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code (Claims of the United States Government) and the standards in this part. In such cases, the specifically applicable laws and regulations will generally take precedence over this part.

§ 1015.105 Form of payment.

Claims may be paid in the form of money or, when a contractual basis exists, the Government may demand the return of specific property or the performance of specific services.

§ 1015.106 Subdivision of claims not authorized.

Debts may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered a single debt in determining whether the debt is one of less than $100,000 (excluding interest, penalties, and administrative costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise or suspension or termination of collection activity.

§ 1015.107 Required administrative proceedings.

DOE is not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

§ 1015.108 No private rights created.

The standards in this part do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of DOE, Treasury, the DOJ or other agency to comply with any of the provisions of this part be available to any debtor as a defense.

Subpart B—Standards for the Administrative Collection of Claims

§ 1015.200 Scope.

The subpart sets forth the standards for administrative collection of claims under this part. This subpart corresponds to 31 CFR part 901 of the Treasury Federal Claims Collection Standards.

§ 1015.201 Aggressive agency collection activity.

(a) Heads of DOE Headquarters Elements and Field Elements or their designees must promptly notify the appropriate DOE finance office of claims arising from their operations. A claim will be recorded and controlled by the responsible finance office upon receipt of documentation from a competent authority establishing the amount due.

(b) In accordance with 31 CFR Chapter IX parts 900–904 and this part, DOE will aggressively collect all debts arising out of activities. Collection activities shall be undertaken promptly with follow-up action taken as necessary.

(c) Debts referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), shall be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(d) DOE will cooperate with other agencies in its debt collection activities.

(e) DOE will refer debts to Treasury as soon as due process requirements are complete, and should refer such debts no later than 180 days after the debt has become delinquent. On behalf of DOE, Treasury will take appropriate action to collect or compromise the referred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and action. Appropriate action to collect a debt may include referral to another debt collection center, a private collection contractor, or the DOJ for litigation. (See 31 CFR 285.12, Transfer of Debts to Treasury for Collection.) This requirement does not apply to any debt that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sale program;

(3) Has been referred to a private collection contractor for a period of time acceptable to Treasury; or

(4) Will be collected under internal offset procedures within three years after the debt first became delinquent.

(f) Treasury is authorized to charge a fee for services rendered regarding referred or transferred debts. DOE will add the fee to the debt as an administrative cost (see § 1015.212(c)).

§ 1015.202 Demand for payment.

(a) Written demand as described in paragraph (b) of this section will be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with DOE to resolve the debt. Generally, one demand letter issued 30 days after the initial notice, bill, or written demand should suffice. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under this Part, including immediate referral for litigation.

(b) Demand letters will inform the debtor of:

(1) The basis for the indebtedness and the rights, if any, the debtor may have to seek review within DOE;

(2) The applicable standards for imposing any interest, penalties, or administrative costs;

(3) The date by which payment should be made to avoid late charges (*i.e.*, interest, penalties, and administrative costs) and enforced collection, which generally should not be more than 30 days from the date that the demand letter is mailed or hand-delivered;

(4) The name, address, and phone number of a contact person or office within DOE;

(5) DOE's intent to refer unpaid debts to Treasury for collection;

(6) DOE's intent to authorize Treasury to add fees for services rendered as an administrative fee;

(7) DOE's intent to authorize Treasury to utilize collection tools such as credit bureau reporting, private collection agencies, administrative wage garnishment, Federal salary offset, tax refund offset, administrative offset, litigation, and other tools, as appropriate, to collect the debt;

(8) DOE's willingness to discuss alternative methods of payment;

(9) The debtor's entitlement to consideration of a waiver, depending on applicable statutory authority; and

(10) DOE's intent to suspend or revoke licenses, permits, or privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with DOE regulations or governing procedures.

(c) DOE will seek to ensure that demand letters are mailed or hand-delivered on the same day that they are dated.

(d) DOE will seek to respond promptly to communications from debtors, within 30 days whenever feasible, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(e) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if DOE determines to pursue, or is required to pursue, offset, the procedures applicable to offset should be followed (see § 1015.203 of this subpart). The availability of funds or money for debt satisfaction by offset and DOE's determination to pursue collection by offset shall release DOE from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(f) Prior to referring a debt for litigation, DOE should advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification should comply with Executive Order 12988 (3 CFR, 1996 Comp, pp. 157–163) and should be given as part of a demand letter under paragraph (b) of this section.

(g) When DOE learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, DOE should immediately seek legal advice from appropriate legal counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless counsel determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately.

(1) After seeking legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. DOE will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If DOE is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, DOE will seek legal advice from counsel to determine whether its payments to the debtor and payments of other agencies available for offset may be frozen until relief from the automatic stay can be obtained from the bankruptcy court. DOE also will seek legal advice from counsel to determine whether recoupment is available.

§ 1015.203 Collection by administrative offset.

(a) *Scope.* (1) The term ''administrative offset'' has the meaning provided in 31 U.S.C. 3701(a)(1).

(2) This section does not apply to:

(i) Debts arising under the Social Security Act (42 U.S.C. 301, *et. seq.*) except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act (42 U.S.C. 301, *et. seq.*) except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, state law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, DOE will seek legal advice from appropriate legal counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) As described in § 1015.201(e), under the DCIA, DOE is required to refer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). Administrative offset is one type of collection tool used by Treasury to collect debts referred under 31 CFR 285.12. Thus, by transferring debts to Treasury, DOE will satisfy the requirement to notify Treasury of debts for the purposes of administrative offset and duplicate referrals are not required. A debt, which is not transferred to Treasury for purposes of debt collection, however, may be subject to the DCIA requirement of notification to Treasury for purposes of administrative offset.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to Treasury as described in paragraph (b)(1) of this section shall be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of

Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by the Secretary of the Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Treasury will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice shall include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of DOE as the creditor agency requesting the offset, and a contact point within DOE who will respond to questions regarding the offset.

(4) As required in 31 CFR 901.3(b)(4), DOE will refer a delinquent debt to Treasury for administrative offset, only after the debtor:

(i) Has been sent written notice of the type and amount of the debt, the intention of DOE to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(ii) Has been given:

(A) The opportunity to inspect and copy DOE records related to the debt;

(B) The opportunity for a review within DOE of the determination of indebtedness; and

(C) The opportunity to make a written agreement to repay the debt.

(iii) DOE may omit the procedures set forth in paragraph (a)(4) of this section when:

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney,* 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, DOE first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, DOE shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

(iv) When DOE previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (see § 1015.202), DOE need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) When DOE refers delinquent debts to Treasury, DOE must certify, in a form acceptable to Treasury, that:

(i) The debt(s) is (are) past due and legally enforceable; and

(ii) DOE has complied with all due process requirements under 31 U.S.C. 3716(a) and DOE regulations.

(6) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. Treasury may exempt classes of DOE payments from centralized offset upon the written request of the Secretary of DOE.

(7) In accordance with 31 U.S.C. 3716(f), Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from DOE that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (b)(5) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that DOE conducts, at DOE's discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable non-tax delinquent debts may be collected through non-centralized administrative offset. In these cases, DOE may make a request directly to a payment-authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, it may be appropriate for DOE to request that the Office of Personnel Management (OPM) offset a Federal employee's lump sum payment upon leaving Government service to satisfy an unpaid advance.

(2) DOE shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interest of the United States with respect to the program of DOE, or would otherwise be contrary to law. Appropriate use will be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(3) When collecting multiple debts by non-centralized administrative offset, DOE generally will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(d) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (b)(4) of this section, DOE may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801–831.1808. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

(e) *Review requirements.* (1) For purposes of this section, whenever DOE is required to afford a debtor a review within the agency, DOE shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and DOE determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although DOE will carefully document all significant matters discussed at the hearing.

(3) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and DOE has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(4) In those cases when an oral hearing is not required by this section, DOE will accord the debtor a ''paper hearing,'' that is, a determination of the request for reconsideration based upon a review of the written record.

§ 1015.204 Reporting debts.

(a) DOE may disclose delinquent debts to consumer reporting agencies in accordance with 31 U.S.C. 3711(e), the DCIA, the revised Federal Claims Collection Standards (31 CFR parts 900–904) published November 22, 2000, and other applicable authorities. DOE will ensure that all of the rights and protections afforded to the debtor under 31 U.S.C. 3711(e) have been fulfilled. Additional guidance is contained in Treasury's ''Guide to the Federal Credit Bureau Program,'' revised October 2001.

(b) As described in § 1015.201(e), under the DCIA (31 U.S.C. 3711(g)), DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury will report debts it is collecting to the appropriate designated credit reporting agencies on behalf of DOE. A debt not transferred to Treasury for purposes of debt collection, however, may be subject to the DCIA requirement to report all non-tax delinquent consumer debts to credit reporting agencies.

§ 1015.205 Credit reports.

(a) In order to aid DOE in making appropriate determinations as to the collection and compromise of claims; the collection of interest, penalties, and administrative costs; and the likelihood of collecting the claim, DOE may institute a credit investigation of the debtor at any time following receipt of knowledge of the claim.

(b) As described in § 1015.201(e), under the DCIA (31 U.S.C. 3711(g)), DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury may also institute a credit investigation of the debtor on behalf of DOE.

§ 1015.206 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.

(a) DOE may contract with private collection contractors in accordance with 31 U.S.C. 3718(d), the DCIA, the revised Federal Claims Collection Standards (31 CFR parts 900–904) published November 22, 2000, and other applicable authorities.

(b) As described in § 1015.201(e), under the DCIA, DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing) under 31 U.S.C. 3711(g). As part of its regular debt collection procedures, Treasury may refer delinquent debts to private collection contractors on behalf of DOE.

(c) DOE may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets. DOE must establish procedures acceptable to Treasury before entering into contracts to recover assets of the United States held by a state government or a financial institution.

(d) DOE may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges DOE for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

§ 1015.207 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.

(a) Unless waived by the Secretary of DOE or his designee, DOE may not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person who DOE knows to be delinquent on a non-tax debt owed to a Federal agency. This prohibition does not apply to disaster loans. The authority to waive the application of this section may be delegated to the Chief Financial Officer and redelegated only to the Deputy Chief Financial Officer of DOE. DOE may extend credit after the delinquency has been resolved. See 31 CFR 285.13 (Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) In non-bankruptcy cases, DOE offices seeking the collection of statutory penalties, forfeitures, or other types of claims should consider the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with DOE's regulations or governing procedures. The debtor should be advised in DOE's written demand for payment of DOE's ability to suspend or revoke licenses, permits, or privileges. Any DOE office making, guaranteeing, insuring, acquiring, or participating in loans should consider suspending or disqualifying any lender, contractor, or broker from doing further business with DOE or engaging in programs sponsored by DOE if such lender, contractor, or broker fails to pay its debts to the Government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 should be reported to Treasury. Treasury will forward to all interested agencies notification that a surety's certificate of authority to do business with the Government has been revoked by Treasury.

(c) The suspension or revocation of licenses, permits, or privileges also should extend to Federal programs or activities that are administered by the states on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors. Therefore, states that manage Federal activities, pursuant to approval from DOE, should ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or privileges to debtors who fail to pay their debts to the Federal Government.

(d) In bankruptcy cases, before advising the debtor of DOE's intention to suspend or revoke licenses, permits, or privileges, DOE will seek legal advice from counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 1015.208 Administrative wage garnishment.

(a) DOE may use administrative wage garnishment to collect money from a debtor's disposable pay to satisfy delinquent debt in accordance with section 31001(o) of the DCIA, codified at 31 U.S.C. 3720D. Treasury has issued regulations implementing the administrative wage garnishment provisions contained in the DCIA, at 31 CFR 285.11. DOE has adopted these regulations in their entirety.

(b) As described in § 1015.201(e) of this part, under the DCIA (31 U.S.C. 3711(g)), DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury may use administrative wage garnishment on behalf of DOE.

§ 1015.209 Tax refund offset.

(a) DOE may authorize the Internal Revenue Service (IRS) to offset a tax refund to satisfy delinquent debt in accordance with 31 U.S.C. 3720A, Reduction of Tax Refund by Amount of Debt. Treasury has issued regulations implementing the tax refund offset as part of Treasury's mandatory centralized offset at 31 CFR 285.2, Offset of Tax Refund to Collect Past-Due, Legally

Enforceable Non-tax Debt. DOE has adopted 31 U.S.C. 3720A and 31 CFR 285.2 in their entirety. The due process requirements of 31 U.S.C. 3720A are contained in §§ 1015.203(b)(4), and 1015.203(e) of this part.

(b) As described in § 1015.201(e) of this part, under the DCIA (31 U.S.C. 3711(g)), DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury may use tax refund offset on behalf of DOE.

§ 1015.210 Liquidation of collateral.

(a) DOE may liquidate security or collateral through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When DOE learns that a bankruptcy petition has been filed with respect to a debtor, DOE will seek legal advice from counsel concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 1015.211 Collection in installments.

(a) Whenever feasible, DOE shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, DOE may accept payment in regular installments. DOE will obtain a current financial statement showing the debtor's assets, liabilities, income, and expenses from debtors who represent that they are unable to pay in one lump sum, and independently verify such representations whenever possible. DOE may also obtain credit reports or other financial information to assess installment requests. DOE may use its own financial information form or a DOJ form, such as the Financial Statement of Debtor (OBD–500) (see § 1015.302(g) of this part). When DOE agrees to accept payments in regular installments, it will obtain a legally enforceable, written agreement from the debtor that specifies all of the terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments should be obtained in appropriate cases. DOE may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at DOE's option.

§ 1015.212 Interest, penalties and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, DOE shall charge interest, penalties and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. DOE shall mail or hand-deliver a written notice to the debtor, at the debtor's most recent address available to DOE, explaining DOE's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) DOE shall charge interest on debts owed the United States as follows:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C 3717, DOE may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. DOE will document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, DOE may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(c) DOE shall assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs should be based on actual costs incurred or upon estimated costs as determined by the assessing office.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, DOE shall charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency.

(e) DOE may increase an ''administrative debt'' by the cost of living adjustment in lieu of charging interest and penalties under this section. ''Administrative debt'' includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts shall be computed annually. DOE will use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by DOE shall be applied first to outstanding penalties, second to administrative costs, third to interest, and last to principal.

(g) DOE shall waive the collection of interest and administrative costs imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. DOE may extend this 30-day period on a case-by-case basis. In addition, DOE may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if DOE determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(h) When a debtor requests a waiver or review of the debt, DOE will continue

to accrue interest, penalties, and administrative costs during the period collection activity is suspended. Upon completion of DOE's review, interest, penalties, and administrative costs related to the portion of the debt found to be without merit will be waived.

(i) DOE is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law.

§ 1015.213 Analysis of costs.

DOE will prepare periodic comparisons of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges will be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.

§ 1015.214 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under §§ 1015.100–105 of this part or other authority, DOE may send a request to Treasury to obtain a debtor's mailing address from the records of the IRS.

(b) DOE may use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 1015.215 Federal salary offset.

(a) DOE may authorize Treasury to offset a Federal salary to satisfy delinquent debt in accordance with 5 U.S.C. 5514, Installment Deduction for Indebtedness to the United States; 5 CFR 550.1101 through 550.1108, Collection by Offset from Indebted Government Employees; 31 CFR parts 900–904, the revised Federal Claims Collection Standards; and 31 CFR 285.7, Salary Offset. DOE shall ensure that all of the rights and protections afforded to the debtor under 5 U.S.C. 5514 and 31 CFR 901.3 have been fulfilled. Claims due from Federal employees will be collected in accordance with DOE Order 2200.2B, Collection from Current and Former Employees for Indebtedness to the United States.

(b) As described in § 1015.201(e), under the DCIA (31 U.S.C. 3711(g)), DOE is required to refer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury may use Federal salary offset on behalf of DOE.

§ 1015.216 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the DCIA, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1, *et seq.*); the Social Security Act (42 U.S.C. 301, *et seq.*) except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the DCIA, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section unless the debt arose under those laws.

Subpart C—Standards for the Compromise of Claims

§ 1015.300 Scope.

This subpart sets forth the standards for the compromise of claims under this part. This subpart corresponds to 31 CFR part 902 of the Treasury Federal Claims Collection Standards.

§ 1015.301 Scope and application.

(a) The standards set forth in this subpart apply to the compromise of debts pursuant to 31 U.S.C. 3711. DOE's Chief Financial Officer or designee or Heads of Field Elements or designees in field locations may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, DOE when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed $100,000 or any higher amount authorized by the Attorney General.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the DOJ. DOE will evaluate the compromise offer, using the factors set forth in this part. If an offer to compromise any debt in excess of $100,000 is acceptable to DOE, DOE shall refer the debt to the Civil Division or other appropriate litigating division in the DOJ using a Claims Collection Litigation Report (CCLR). DOE may obtain the CCLR from the DOJ's National Central Intake Facility. The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. DOJ approval is not required if DOE rejects a compromise offer.

§ 1015.302 Bases for compromise.

(a) DOE may compromise a debt if the Government cannot collect the full amount because:

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;

(2) The Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning the Government's ability to prove its case in court.

(b) In determining the debtor's inability to pay, DOE should consider relevant factors such as the following:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) DOE will verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. DOE will consider the applicable exemptions available to the debtor under state and Federal law in determining the Government's ability to enforce collection. DOE may also consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning the Government's ability to

prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, DOE will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(e) DOE may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, DOE should consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(f) DOE generally will not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, DOE will obtain a legally enforceable, written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. Whenever possible, DOE also will obtain security for repayment in the manner set forth in subpart B of this part.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, DOE will, if feasible, obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. DOE also may obtain credit reports or other financial information to assess compromise offers. DOE may use its own financial information form or may request suitable forms from the DOJ or the local United States Attorney's Office.

§ 1015.303 Enforcement policy.

Pursuant to this part, DOE may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if DOE's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by DOE's acceptance of the sum to be agreed upon.

§ 1015.304 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, DOE will pursue collection activity against all debtors, as appropriate. DOE will not attempt to allocate the burden of payment between the debtors, but will proceed to liquidate the indebtedness as quickly as possible.

(b) DOE will seek to ensure that a compromise agreement with one debtor does not release DOE's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 1015.305 Further review of compromise offers.

If DOE is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within DOE's delegated compromise authority, it may refer the offer to the Civil Division or other appropriate litigating division in the DOJ, using a CCLR accompanied by supporting data and particulars concerning the debt. The DOJ may act upon such an offer or return it to DOE with instructions or advice.

§ 1015.306 Consideration of tax consequences to the Government.

In negotiating a compromise, DOE will consider the tax consequences to the Government. In particular, DOE will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements see § 1015.405 of this part.

§ 1015.307 Mutual releases of the debtor and the Government.

In all appropriate instances, a compromise that is accepted by DOE will be implemented by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

Subpart D—Standards for Suspending or Terminating Collection Activity

§ 1015.400 Scope.

The subpart sets forth the standards for terminating collection activity. This subpart corresponds to 31 CFR part 903 of the Treasury Federal Claims Collection Standards.

§ 1015.401 Scope and application.

(a) The standards set forth in this subpart apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the DOJ for litigation, DOE may suspend or terminate collection under this part with respect to debts arising out of activities of, or referred to, DOE.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the DOJ. If DOE believes that suspension or termination of any debt in excess of $100,000 may be appropriate, DOE shall refer the debt to the Civil Division or other appropriate litigating division in the DOJ, using the CCLR. The referral should specify the reasons for DOE's recommendation. If, prior to referral to the DOJ, DOE determines that a debt is plainly erroneous or clearly without legal merit, DOE may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence.

§ 1015.402 Suspension of collection activity.

(a) DOE may suspend collection activity on a debt when:

(1) DOE cannot locate the debtor;

(2) The debtor's financial condition is expected to improve; or

(3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, DOE may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and:

(1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(c)(1) DOE shall suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits DOE from collecting the debt during that time. As indicated in § 1015.212(h), DOE will continue to accrue interest, penalties, and administrative costs during the period collection activity is suspended.

(2) If the statute under which the request is sought does not prohibit collection activity pending consideration of the request, DOE may use discretion, on a case-by-case basis, to suspend collection. Further, DOE ordinarily will suspend collection action upon a request for waiver or review if DOE is prohibited by statute or regulation from issuing a refund of amounts collected prior to DOE's consideration of the debtor's request. However, DOE will not suspend collection when DOE determines that the request for waiver or review is frivolous or was made primarily to delay collection.

(d) When DOE learns that a bankruptcy petition has been filed with respect to a debtor, in most cases the collection activity on a debt must be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless DOE can clearly establish that the automatic stay has been lifted or is no longer in effect. DOE will seek legal advice immediately from counsel and, if legally permitted, take the necessary legal steps to ensure that no funds or money is paid by DOE to the debtor until relief from the automatic stay is obtained.

§ 1015.403 Termination of collection activity.

(a) DOE may terminate collection activity when:

(1) DOE is unable to collect any substantial amount through its own efforts or through the efforts of others;

(2) DOE is unable to locate the debtor;

(3) Costs of collection are anticipated to exceed the amount recoverable;

(4) The debt is legally without merit, or enforcement of the debt is barred by any applicable statute of limitations;

(5) The debt cannot be substantiated; or

(6) The debt against the debtor has been discharged in bankruptcy.

(b) Before terminating collection activity, DOE will have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude DOE from retaining a record of the account for purposes of:

(1) Selling the debt, if Treasury determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time of termination of collection activity; or

(4) Screening future applicants for prior indebtedness.

(c) Generally, DOE shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. DOE may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, if DOE is a known creditor of a debtor, its claims may survive a discharge if DOE did not receive formal notice of the proceedings. DOE will seek legal advice from counsel if it believes it has claims or offsets that may survive the discharge of a debtor.

§ 1015.404 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, DOE may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

§ 1015.405 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), DOE shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury, Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under § 1015.400 of this part and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this subpart. When DOE discharges a debt in full or in part, further collection action is prohibited. Therefore, DOE will make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, DOE must terminate debt collection action.

(b) 31 U.S.C. 3711(i) requires DOE to sell a delinquent non-tax debt upon termination of collection action if Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), DOE may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(c) Upon discharge of an indebtedness, DOE must report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. DOE may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on DOE's behalf.

(d) When discharging a debt, DOE must request that litigation counsel release any liens of record securing the debt.

Subpart E—Referrals to the Department of Justice

§ 1010.500 Scope.

This subpart sets forth the standards for referrals to the Department of Justice. This subpart corresponds to 31 CFR part 904 of the Treasury Federal Claims Collection Standards.

§ 1015.501 Referrals to the Department of Justice and the Department of the Treasury's Cross-Servicing Program.

(a) DOE may authorize Treasury to refer a delinquent debt to the DOJ for litigation in accordance with 31 U.S.C. 3711(g), the DCIA, the revised Federal Claims Collection Standards (31 CFR parts 900–904), and other applicable authorities. DOE shall ensure that all of the rights and protections afforded to the debtor under 31 U.S.C. 3711(e) have been fulfilled.

(b) As described in § 1015.201(e), under the DCIA (31 U.S.C. 3711(g)), DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury will refer debts to the DOJ for litigation on behalf of DOE.

§ 1015.502 Prompt referral.

(a) If a debt is not referred to the DOJ through Treasury's cross-servicing program, DOE shall promptly refer to the DOJ for litigation debts on which aggressive collection activity has been taken in accordance with § 1015.200 of this part and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with §§ 1015.300 and 1015.400 of this part. DOE may refer those debts arising out of activities of DOE. Debts for which the principal amount is over $1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, shall be referred to the Civil Division or other division responsible for litigating such debts at the DOJ, Washington, DC. Debts for which the principal amount is $1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, shall be referred to the DOJ's Nationwide Central Intake Facility as required by the CCLR instructions. Claims will be referred as early as possible, consistent with aggressive agency collection activity and the observance of the standards contained in the Federal Claims Collection Standards (31 CFR parts 900–904), and, in any event, well within the period for initiating timely lawsuits against the debtors. DOE shall make every effort to refer delinquent debts to the DOJ for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, DOE will make every effort to refer these delinquent debts to the DOJ for litigation within one year from the date the loan was presented to DOE for payment or re-insurance.

(b) The DOJ has exclusive jurisdiction over the debts referred to it pursuant to this section. DOE shall refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the claim to the DOJ. DOE shall notify the DOJ immediately of any payments credited by DOE to the debtor's account after referral of a debt or claim under this section. The DOJ shall notify DOE, in a timely manner, of any payments it receives from the debtor.

§ 1015.503 Claims Collection Litigation Report.

(a) Unless excepted by the DOJ, DOE shall complete the CCLR (see § 1015.301 of this part), accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to the DOJ for litigation. DOE shall complete all of the sections of the CCLR appropriate to each claim as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(b) DOE shall indicate clearly on the CCLR the actions it wishes the DOJ to take with respect to the referred claim. The CCLR permits DOE to indicate specifically any of a number of litigative activities which the DOJ may pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforce collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) DOE also shall use the CCLR to refer claims to the DOJ to obtain the DOJ's approval of any proposals to compromise the claims or to suspend or terminate DOE collection activity.

§ 1015.504 Preservation of evidence.

DOE will take care to preserve all files and records that may be needed by the DOJ to prove its claims in court. DOE ordinarily will include certified copies of the documents that form the basis for the claim in the packages referring its claims to the DOJ for litigation. DOE shall provide originals of such documents immediately upon request by the DOJ.

§ 1015.505 Minimum amount of referrals to the Department of Justice.

(a) DOE shall not refer for litigation claims of less than $2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. The DOJ promptly shall notify DOE if the Attorney General changes this minimum amount.

(b) DOE shall not refer claims of less than the minimum amount unless:

(1) Litigation to collect such smaller claims is important to ensure compliance with DOE's policies or programs;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to DOE for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under state and Federal law and the judicial remedies available to the Government.

(4) DOE will consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in the DOJ prior to referring claims valued at less than the minimum amount.

PART 1018—REFERRAL OF DEBTS TO IRS FOR TAX REFUND OFFSET

■ 2. The authority citation for Part 1018 continues to read as follows:

Authority: 31 U.S.C. 3720A; Pub. L. 98–369; 98 Stat. 1153.

PART 1018—[REMOVED]

■ 3. Part 1018 is removed.

[FR Doc. 03–20378 Filed 8–13–03; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 15

Administrative Claims Under Federal Tort Claims Act

CFR Correction

In Title 14 of the Code of Federal Regulations, Parts 1 to 59, revised as of January 1, 2003, in § 15.3, on page 78, add paragraph (c) to read as follows:

§ 15.3 Administrative claim, when presented; appropriate office.

* * * * *

(c) Claim forms are available at each location listed in paragraph (b) of this section.

* * * * *

[FR Doc. 03–55521 Filed 8–13–03; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–25–AD; Amendment 39–13263; AD 2003–16–10]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PW206A and PW206E Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney Canada (PWC) PW206A and PW206E turboshaft engines. This AD requires initial and repetitive borescope inspections of compressor turbine and power turbine blades for blade axial shift, and replacement of blade retaining rivets and certain rotor air seals as terminating action for the repetitive borescope inspections.

This AD is prompted by reports of engine shutdowns and emergency landings due to severe vibration and drops in engine torque, and an increase in internal engine temperature, triggering in-flight engine fire warnings. We are issuing this AD to prevent turbine blade axial shift, which could cause high levels of vibration, loss of engine torque, in-flight engine shutdown, and possible uncontained engine failure.

DATES: Effective August 29, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 29, 2003.

We must receive any comments on this AD by October 14, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–25–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: 9-ane-adcomment@faa.gov.

You may get the service information referenced in this AD from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1. You may examine the service information at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on PWC PW206A and PW206E turboshaft engines. Transport Canada advises that there have been several reports of PW206-powered helicopters where axial shifting of compressor turbine blades and power turbine blades resulted in heavy blade rubs, causing an increase in internal engine temperature, triggering in-flight engine fire warnings and subsequent emergency landings.

Relevant Service Information

We have reviewed and approved the technical contents of the following Pratt & Whitney Canada service documents:

- Alert Service Bulletin (ASB) No. PW200–72–A28242, Revision 1, dated October 2, 2002, that describes procedures for borescope inspecting of compressor turbine blades and power turbine blades for axial shift within the disks.
- Service Bulletin (SB) No. PW200–72–28069, Revision 5, dated February 10, 2003, that describes procedures for replacing compressor turbine blade retaining rivets, the No. 3 bearing rotor air seal, and the No. 4 bearing front rotor air seal.
- SB No. PW200–72–28239, Revision 2, dated February 10, 2003, that describes procedures for replacing power turbine blade retaining rivets.

Transport Canada classified these service bulletins as mandatory and issued AD CF–2003–06, dated February 4, 2003, in order to assure the airworthiness of these PWC PW206A and PW206E turboshaft engines in Canada.

Bilateral Airworthiness Agreement

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

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other PWC PW206A and PW206E turboshaft engines of the same type design. We are issuing this AD to prevent turbine blade axial shift, leading to high levels of vibration, loss of engine torque, in-flight engine shutdown, and possible uncontained engine failure. This AD requires:

- Initial and repetitive borescope inspections of compressor turbine blades and power turbine blades for blade axial shift within the turbine disks, and
- Replacement of blade retaining rivets, the No. 3 bearing rotor air seal, and the No. 4 bearing front rotor air seal as mandatory terminating action for the repetitive borescope inspections.

You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under

ADDRESSES. Include ''AD Docket No. 2003–NE–25–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that the 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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–25–AD'' in your request.

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. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–16–10 Pratt & Whitney Canada: Amendment 39–13263. Docket No. 2003–NE–25–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 29, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD is applicable to Pratt & Whitney Canada (PWC) PW206A and PW206E turboshaft engines. These engines are installed on, but not limited to MD Helicopters Inc. Model MD–900 helicopters.

Unsafe Condition

(d) This AD is prompted by reports of engine shutdowns and emergency landings due to severe vibration and drops in engine torque, and an increase in internal engine temperature, triggering in-flight engine fire warnings. We are issuing this AD to prevent turbine blade axial shift, leading to high levels of vibration, loss of engine torque, in-flight engine shutdown, and possible uncontained engine failure.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Sequence of Borescope Inspections

(f) Perform an initial sequence of borescope inspections of compressor turbine blades and power turbine blades for blade axial shift within the turbine disks. Use paragraph 3. of Accomplishment Instructions of PWC Alert Service Bulletin (ASB) No. PW200–72–A28242, Revision 1, dated October 2, 2002, for the borescope inspection. Do the inspections at the following times:

(1) Within 25 flight hours accumulated or 30 days after the effective date of this AD, whichever occurs earlier.

(2) After 30 flight hours, but before 50 flight hours accumulated since inspection of paragraph (f)(1) of this AD.

(3) After 80 flight hours, but before 100 flight hours accumulated since inspection of paragraph (f)(1) of this AD.

(4) After 180 flight hours, but before 200 flight hours accumulated since inspection of paragraph (f)(1) of this AD.

Repetitive Borescope Inspections

(g) Thereafter, perform repetitive borescope inspections at intervals of not less than 280 nor more than 300 flight hours since-last-inspection. Use paragraph 3. of Accomplishment Instructions of PWC ASB No. PW200–72–A28242, Revision 1, dated October 2, 2002, for the borescope inspections.

Disposition

(h) If any blade shift is found, remove engine from service before further flight and perform rivet and rotor air seal replacements, as specified in paragraphs (j)(1) and (j)(2) of this AD, to return the engine to service.

(i) If blade shift is suspected, confirm the blade shift with the appropriate engine manufacturer service representative before further flight. Remove engine from service if shift is confirmed, and perform rivet and rotor air seal replacements, as specified in paragraphs (j)(1) and (j)(2) of this AD, to return the engine to service.

Terminating Action

(j) At the next engine shop visit for any reason, or at the next engine overhaul, whichever occurs first, but before December 31, 2009, do the following:

(1) Replace the compressor turbine blade retaining rivets, the No. 3 bearing rotor air seal, and the No. 4 bearing front rotor air seal. Use paragraph 3. Accomplishment Instructions of Service Bulletin (SB) No. PW200–72–28069, Revision 5, dated February 10, 2003.

(2) Replace the power turbine blade retaining rivets. Use paragraph 3. Accomplishment Instructions of SB No. PW200–72–28239, Revision 2, dated February 10, 2003.

Previous Credit

(k) Previous credit is allowed for terminating action in paragraph (j)(1) and (j)(2) of this AD that was done in accordance with Accomplishment Instructions of SB No. PW200–72–28069, Revision 4, dated December 27, 2000, and Accomplishment Instructions of SB No. PW200–72–28239, dated September 5, 2002, or Revision 1, dated December 5, 2002, before the effective date of this AD.

(l) Completing the actions in paragraphs (j)(1) and (j)(2) of this AD terminates all inspection requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(m) You must request AMOCs as specified in 14 CFR part 39.19. All AMOCs must be approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299.

Material Incorporated by Reference

(n) You must use the following Pratt & Whitney Canada Service Bulletins and Alert Service Bulletin to perform the inspections and replacement actions required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR

part 51. You may get a copy from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1. You may review copies at Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–25–AD, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. Table 1 follows:

TABLE 1.—INCORPORATION BY REFERENCE

Service bulletin	Page No.(s)	Revision	Date
PW200–72–A28242 Total Pages—7	All	1	October 2, 2002.
PW200–72–28069 Total Pages—17	All	5	February 10, 2003.
PW200–72–28239 Total Pages—20	All	2	February 10, 2003.

Related Information

(o) Transport Canada issued airworthiness directive CF–2003–06, dated February 4, 2003, which pertains to the subject of this AD, in order to assure the airworthiness of these PWC PW206A and PW206E turboshaft engines in Canada.

Issued in Burlington, Massachusetts, on August 4, 2003.

Francis A. Favara,

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

[FR Doc. 03–20484 Filed 8–13–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–341–AD; Amendment 39–13247; AD 94–01–10 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –200PF Series Airplanes Equipped With Pratt and Whitney PW2000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 757–200 and –200PF series airplanes, that currently requires inspections, adjustments, and functional checks of the engine thrust reverser system; and modification of the engine thrust reverser directional control valve. The existing AD also requires installation of an additional thrust reverser locking feature and periodic functional tests of the locking feature following installation. That AD was prompted by results of a safety review of the thrust reverser system on these airplanes. The actions specified by that AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane. This action reduces the applicability of the existing AD.

DATES: Effective September 18, 2003.

The incorporation by reference of certain publications, as listed in the regulations, was approved by the Director of the Federal Register as of March 3, 1994 (59 FR 4558, February 1, 1994).

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 16, 1991 (56 FR 46725, September 16, 1991). (The document numbers of these certain publications were cited erroneously in the September 16, 1991, issue of the **Federal Register**, as listed in the regulations.)

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

FOR FURTHER INFORMATION CONTACT: Thomas Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6508; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 94–01–10, amendment 39–8792 (59 FR 4558, February 1, 1994), which is applicable to certain Boeing Model 757 series airplanes, was published in the **Federal Register** on October 8, 2002 (67 FR 62654). The action proposed to continue to require inspections, adjustments, and functional checks of the engine thrust reverser system; modification of the engine thrust reverser directional control valve; and installation and periodic functional tests of an additional thrust reverser locking feature. The action also proposed to reduce the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the AD

Two commenters support the AD, as proposed.

Request To Issue AD as a Correction

Two commenters request that the proposed AD be issued to correct rather than revise AD 94–01–01. The commenters suggest that a correction in this case would be more appropriate and would minimize record keeping by the operators. One of the commenters states that, ''[I]f a new AD number or a revision to the existing AD is issued, [the operator] will be required to revise all of [the operator's] AD implementation and record keeping documentation at a significant cost to [the] airline. If a correction to the original AD is issued, no document changes will be necessary.''

The FAA disagrees with the commenters' characterization of the AD revision process. First, a correction to an AD is used primarily for nonsubstantive changes including clarification of ambiguous language in the existing AD. A correction to an AD does not receive a new AD number. A revision to an AD is used to make changes such as reducing the applicability for this AD. A revision of an AD is usually less complicated for operators to track because the compliance documentation need include only the AD number regardless of the revision number. This final rule will be issued as a revision to the existing AD, as proposed.

Request for Clarification of Existing Requirements

One commenter questions whether an aircraft could be dispatched with the thrust reversers active after failing the thrust reverser sync lock integrity test but passing subsequent testing in accordance with Boeing Service Bulletin 757–78–0025 or Airplane Maintenance Manual 78–31–00/501.

Paragraph (e) of AD 94–01–10 requires that any discrepancy found during any test required by that AD be corrected before further flight in accordance with the Boeing 757 Maintenance Manual. Therefore, any failures experienced during the integrity test must be appropriately addressed and resolved prior to dispatch of the airplane with the thrust reverser system active. No change to the final rule is necessary regarding this issue.

Request To Add Procedure

One commenter requests the addition of a step in the technical procedures that returns the airplane to its normal operational configuration after the required testing (Section 2.C. (''Put the Airplane Back to Its Usual Condition'') of the ''Thrust Reverser Sync Lock Integrity Test''). This step was not included in AD 94–01–10. Specifically, the additional step involves returning a maintenance power switch (which was configured to ''Alternate'' before testing) to the ''Normal'' position after testing.

The FAA agrees with the request, for the reasons stated by the commenter. Section 2.C., set forth in paragraph (e) of this final rule, has been revised accordingly to add new step (5). The FAA has determined that this minor, axiomatic change does not expand the scope of the proposed AD.

Request To Broaden Terminating Action

One commenter requests that the proposed AD be revised to provide for terminating action for all actions of the AD. The commenter suggests limiting the applicability of paragraphs (a), (b), and (d) of the proposed AD to airplanes having line numbers prior to 442 (associated design changes were incorporated in production beginning with line number 442) and revising paragraphs (c) and (e) of the proposed AD to require operators to include the inspection requirements as part of their maintenance plan in the form of certification maintenance requirements (CMRs).

The FAA concurs with the request to revise the applicability of (a), (b), and (d). Those paragraphs have been revised accordingly.

However, as explained in the proposed AD, the FAA has approved CMRs as alternative methods of compliance (AMOCs) with the inspection requirements of paragraphs (c) and (e) of AD 94–01–10 for Model 757–300 series airplanes. In addition, the FAA has approved the inspection requirements in the Boeing Maintenance Planning Document as an AMOC for the inspections required by the AD for Model 757–200 series airplanes. The intent of CMRs is not to terminate inspection requirements in ADs but to define specific repetitive inspections or component replacements for equipment, systems, and installations as a result of safety analyses approved by the FAA before an airplane type certificate is issued. Therefore, the FAA does not concur with this request to terminate the actions of paragraphs (c) and (e) of this AD. No change to the final rule is necessary in this regard.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Conclusion

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

Cost Impact

Since this AD merely removes airplanes from the applicability of the existing AD, it adds no additional costs, and requires no additional work to be performed by affected operators. The current costs associated with this amendment are reiterated below for the convenience of affected operators:

The FAA estimates that 270 airplanes of U.S. registry will be affected by this AD.

It takes approximately 624 work hours per airplane to accomplish the modification required by AD 94–01–10, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the modification is estimated to be $37,440 per airplane.

It takes approximately 1 work hour per airplane to accomplish the functional test required by AD 94–01–10, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the tests is estimated to be $60 per airplane, per test.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–8792 (59 FR 4558, February 1, 1994), and by adding a new airworthiness directive (AD), amendment 39–13247, to read as follows:

AD 94–01–10 R1 Boeing: Amendment 39–13247. Docket 2001–NM–341–AD. Revises AD 94–01–10, Amendment 39–8792.

Applicability: Model 757–200 and –200PF series airplanes equipped with Pratt and Whitney PW2000 series engines, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

Inspections/Adjustments/Functional Checks/Modification

(a) For airplanes having line numbers prior to 442: Within 14 days after September 16, 1991 (the effective date of AD 91–20–09, amendment 39–8043), accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Accomplish both paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) Inspect the thrust reverser Directional Control Valve (DCV) assemblies of both engines to determine the solenoid-driven pilot valve's part number, in accordance with Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991.

(A) If any DCV has a suspect pilot valve as specified in the service bulletin, prior to further flight, replace the DCV with a DCV that has a part number of a non-suspect solenoid-driven pilot valve, in accordance with the service bulletin.

(B) If a DCV has a non-suspect solenoid-driven pilot valve as specified in the service bulletin, that pilot valve does not need to be replaced.

(ii) Perform all tests and inspections of the engine thrust reverser control and indication system on both engines in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991. Prior to further flight, correct any discrepancy found in accordance with the service bulletin.

(2) Accomplish paragraph (a)(1) of this AD on one engine's thrust reverser and deactivate the other engine's thrust reverser, in accordance with Section 78–31–1 of Boeing Document D630N002, ''Boeing 757 Dispatch Deviation Guide,'' Revision 8, dated January 15, 1991.

(b) For airplanes having line numbers prior to 442: Within 24 days after September 16, 1991, the requirements of paragraph (a)(1) of this AD must be accomplished on both engines' thrust reverser systems.

(c) For all airplanes: Perform all tests and inspections of the engine thrust reverser control and indication system on both engines in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991, as specified in paragraph (c)(1) or (c)(2) of this AD, as applicable. Correct any discrepancy before further flight in accordance with the service bulletin.

(1) For airplanes having line numbers prior to 442: Repeat the tests and inspections (these tests and inspections are specified in paragraph (a)(1)(ii) of this AD) at intervals not to exceed 3,000 flight hours, and prior to further flight following any maintenance that disturbs the thrust reverser control system.

(2) For airplanes having line numbers 442 and subsequent: Perform the tests and inspections within 3,000 flight hours after the effective date of this AD. Repeat the tests and inspections at intervals not to exceed 3,000 flight hours, and prior to further flight following any maintenance that disturbs the thrust reverser control system.

Installation/Functional Test

(d) For airplanes having line numbers prior to 442: Within 5 years after March 3, 1994 (the effective date of AD 94–01–10, amendment 39–8792), install an additional thrust reverser system locking feature (sync lock installation), in accordance with Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992; or Revision 2, dated January 14, 1993.

(e) Within 1,000 hours' time-in-service after installing the sync lock required by paragraph (d) of this AD (either in production or by retrofit), or within 1,000 hours' time-in-service after March 3, 1994, whichever occurs later; and thereafter at intervals not to exceed 1,000 hours' time-in-service: Perform functional tests of the sync lock in accordance with the ''Thrust Reverser Sync Lock Integrity Test'' procedures specified below. If any discrepancy is found during any test, prior to further flight, correct it in accordance with procedures described in the Boeing 757 Maintenance Manual.

''*THRUST REVERSER SYNC LOCK INTEGRITY TEST*

1. *General*

A. Use this procedure to test the integrity of the thrust reverser sync locks.

2. *Thrust Reverser Sync Lock Test*

A. Prepare for the Thrust Reverser Sync Lock Test.

(1) Open the AUTO SPEEDBRAKE circuit breaker on the overhead circuit breaker panel, P11.

(2) Do the steps that follow to supply power to the thrust reverser system:

(a) Make sure the thrust levers are in the idle position.

CAUTION: DO NOT EXTEND THE THRUST REVERSER WHILE THE CORE COWL PANELS ARE OPEN. DAMAGE TO THE THRUST REVERSER AND CORE COWL PANELS CAN OCCUR.

(b) Make sure the thrust reverser halves are closed.

(c) Make sure the core cowl panels are closed.

(d) Put the EEC MAINT POWER switch or the EEC POWER L and EEC POWER R switches to the ALTN position.

(e) For the left engine:

(1) Put the EEC MAINT CHANNEL SEL L switch to the AUTO position.

(2) Put the L ENG fire switch to the NORM position.

(f) For the right engine:

(1) Put the EEC MAINT CHANNEL SEL R switch to the AUTO position.

(2) Put the R ENG fire switch to the NORM position.

(g) Make sure the EICAS circuit breakers (6 locations) are closed.

WARNING: THE THRUST REVERSER WILL AUTOMATICALLY RETRACT IF THE ELECTRICAL POWER TO THE EEC/THRUST REVERSER CONTROL SYSTEM IS TURNED OFF OR IF THE EEC MAINT POWER SWITCH IS MOVED TO THE NORM POSITION. THE ACCIDENTAL OPERATION OF THE THRUST REVERSER CAN CAUSE INJURY TO PERSONS OR DAMAGE TO EQUIPMENT CAN OCCUR.

(h) Make sure these circuit breakers on the main power distribution panel, P6, are closed:

(1) FUEL COND CONT L
(2) FUEL COND CONT R
(3) T/L INTERLOCK L
(4) T/L INTERLOCK R
(5) LEFT T/R SYNC LOCK
(6) RIGHT T/R SYNC LOCK
(7) L ENG ELECTRONIC ENGINE CONTROL ALTN PWR (if installed)
(8) R ENG ELECTRONIC ENGINE CONTROL ALTN PWR (if installed)

(i) Make sure these circuit breakers on the overhead circuit breaker panel, P11, are closed:

(1) AIR/GND SYS 1
(2) AIR/GND SYS 2
(3) LANDING GEAR POS SYS 1
(4) LANDING GEAR POS SYS 2

(j) For the left engine, make sure these circuit breakers on the P11 panel are closed:

(1) LEFT ENGINE PDIU
(2) LEFT ENGINE THRUST REVERSER CONT/SCAV PRESS
(3) LEFT ENGINE ELECTRONIC ENGINE CONTROL ALTN PWR (if installed)
(4) LEFT ENGINE THRUST REVERSER PRI CONT
(5) LEFT ENGINE THRUST REVERSER SEC CONT

(k) For the right engine, make sure these circuit breakers on the P11 panel are closed:
(1) RIGHT ENGINE PDIU
(2) RIGHT ENGINE THRUST REVERSER CONT/SCAV PRESS
(3) RIGHT ENGINE ELECTRONIC ENGINE CONTROL ALTN PWR (if installed)
(4) RIGHT ENGINE THRUST REVERSER PRI CONT
(5) RIGHT ENGINE THRUST REVERSER SEC CONT
(l) Supply electrical power.
(m) Remove the pressure from the left (right) hydraulic system.

B. Do the Thrust Reverser Sync Lock Test.
(1) Move and hold the manual unlock lever on the center actuator on both thrust reverser sleeves to the unlock position.
(2) Make sure the thrust reverser sleeves did not move.
(3) Move the left (right) reverser thrust lever up and rearward to the idle detent position.
(4) Make sure both thrust reverser sleeves move aft (approximately 0.15 to 0.25 inch).
(5) Release the manual unlock lever on the center actuators.

WARNING: MAKE SURE ALL PERSONS AND EQUIPMENT ARE CLEAR OF THE AREA AROUND THE THRUST REVERSER. WHEN YOU APPLY HYDRAULIC PRESSURE THE THRUST REVERSER WILL EXTEND AND CAN CAUSE INJURIES TO PERSONS OR DAMAGE TO EQUIPMENT.

(6) Pressurize the left (right) hydraulic system.
(7) Make sure the thrust reverser extends.
(8) Move the left (right) reverser thrust lever to the fully forward and down position to retract the thrust reverser.

C. Put the Airplane Back to its Usual Condition.
(1) Remove hydraulic pressure.
(2) Close the left and right fan cowls.
(3) Close the AUTO SPEEDBRAKE circuit breaker on the P11 panel.
(4) Remove electrical power if it is not necessary.
(5) Return the EEC MAINT POWER switch or the EEC POWER L and EEC POWER R switches to the NORMAL position.

D. Repeat the Thrust Reverser Sync Lock Test on the other engine.''

(f) Installation of the sync lock, as required by paragraph (d) of this AD, constitutes terminating action for the requirements of paragraphs (a) through (c) of this AD.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with AD 91–20–09, amendment 39–8043; and AD 94–01–10, amendment 39–8792; are approved as alternative methods of compliance with the requirements of this AD.

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

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

Incorporation by Reference

(i) Except as otherwise required by this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991; Boeing Service Bulletin 757–78–0025, dated September 9, 1991; Boeing Document D630N002, ''Boeing 757 Dispatch Deviation Guide,'' Revision 8, dated January 15, 1991; and Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992, or Boeing Service Bulletin 757–78–0028, Revision 2, dated January 14, 1993; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992; and Boeing Service Bulletin 757–78–0028, Revision 2, dated January 14, 1993; was approved previously by the Director of the Federal Register as of March 3, 1994 (59 FR 4558, February 1, 1994).

(2) The incorporation by reference of Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991; Boeing Service Bulletin 757–78–0025, dated September 9, 1991; and Boeing Document D630N002, ''Boeing 757 Dispatch Deviation Guide,'' Revision 8, dated January 15, 1991; was approved previously by the Director of the Federal Register as of September 16, 1991 (56 FR 46725, September 16, 1991). (The document number of Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991, was cited erroneously in the September 16, 1991, issue of the **Federal Register** as ''757–78H0027.'' The document number of Boeing Service Bulletin 757–78–0025, dated September 9, 1991, was also cited erroneously in the September 16, 1991, issue of the **Federal Register** as ''757–0025.'')

(3) Copies of the service documents may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Dates

(j) This amendment becomes effective on September 18, 2003.

Issued in Renton, Washington, on August 7, 2003.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20710 Filed 8–13–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 18

Reports by Traders

CFR Correction

In Title 17 of the Code of Federal Regulations, Parts 1 to 199, revised as of January 1, 2003, in § 18.04, on page 314, remove paragraph (d).

[FR Doc. 03–55522 Filed 8–13–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

RIN 1076–AE34

Distribution of Fiscal Year 2003 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: We are issuing a final rule requiring that we distribute the remaining 25 percent of fiscal year 2003 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. We are using the Federal Highway Administration (FHWA) Price Trends report for the relative need formula distribution process, with appropriate modifications to address non-reporting states.

EFFECTIVE DATE: August 14, 2003 through September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at 202–208–4359 (phone) or 202–208–4696 (fax).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads (IRR) Program, the Relative Need Formula, the Federal Highway Administration (FHWA) Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?

The background information on the IRR program, the relative need formula, the FHWA Price Trends Report, and the TEA–21 Negotiated Rulemaking process

is detailed in the **Federal Register** notice dated February 15, 2000 (65 FR 7431).

Why Are You Publishing This Final Rule?

We are publishing this final rule only for the distribution of the remaining 25 percent of fiscal year 2003 IRR Program funds. This rule sets no precedent for the final rule to be published as required by section 1115 of TEA–21. On June 5, 2003, we published a temporary rule distributing 75 percent of fiscal year 2003 IRR funds (68 FR 33625).

Why Does This Final Rule Not Allow for Notice and Comment on the Final 25 Percent Distribution of Fiscal Year 2003 IRR Program Funds, and Why Is It Effective Immediately?

Under 5 U.S.C. 553(b)(3)(B), notice and public procedure on the first partial distribution under this rule are impracticable, unnecessary, and contrary to the public interest. In addition, we have good cause for making this final rule for distribution of the remaining 25 percent of fiscal year 2003 IRR Program funds effective immediately under 5 U.S.C. 553(d)(3).

Notice and public procedure would be impracticable because of the urgent need to distribute the remaining 25 percent of fiscal year 2003 IRR Program funds. Approximately 1,300 road and bridge construction projects are at various phases that require additional funds this fiscal year to continue or complete work, including 220 deficient bridges and the construction of approximately 7,300 miles of roads. Fiscal year 2003 IRR Program funds will be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Without this immediate final distribution of fiscal year 2003 IRR Program funds, tribal and BIA IRR projects will be forced to cease activity, placing projects and jobs in jeopardy. Waiting for notice and comment on this final distribution of fiscal year 2003 IRR Program funds would be contrary to the public interest. In some of the BIA regions, approximately 80 percent of the roads in the IRR system (and the majority of the bridges) are designated school bus routes. Roads are essential access to schools, jobs, and medical services. Many of the priority tribal roads are also emergency evacuation routes and represent the only access to tribal lands. Approximately 40 percent of the road miles in Indian country are unimproved roads. Deficient bridges and roads are health and safety hazards. Partially constructed road and bridge projects and deficient bridges and roads jeopardize the health and safety of the traveling public. Further, over 600 projects currently in progress are directly associated with environmental protection and preservation of historic and cultural properties. This rule is going into effect immediately because of the urgent need for distributing the final funds available under the fiscal year 2003 IRR Program to continue these construction projects.

Where Can I Find Information on the Distribution of 75 Percent of Fiscal Year 2003 IRR Funds?

You can find this information in the **Federal Register** notice dated June 5, 2003 (68 FR 33625).

What Comments Did You Receive on the Temporary Rule for Distribution of 75 Percent of Fiscal Year 2003 IRR Program Funds?

In the 30-day comment period after publication of the temporary rule distributing 75 percent of fiscal year 2003 IRR Program funds, we received comments from 24 commenters. One commentor opposed the inclusion of administrative capacity building (ACB) funds in the remaining distribution of fiscal year 2003 IRR Program funds. Twenty-three commenters supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds for various reasons.

Comment: One commentor opposed the inclusion of ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds because IRR Program funds are construction funds for road and bridge projects; inclusion of ACB funds lessens the amount available for construction; and tribes have not expended all of IRR ACB funds distributed in fiscal years 2001 and 2002.

Response: This rule does not include ACB funds in fiscal year 2003. This rule sets no precedent for the final rule to be published as required by section 1115 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 154.

Comment: One commentor supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds to assist tribes who are not current on their IRR inventories and to develop long-range transportation plans.

Response: Both inventory updates and long-range transportation planning activities are eligible activities within the available funding under the IRR authorized funds. The interim formula for fiscal year 2003 will provide tribes with the critical resources to develop inventory data, long-range transportation plans, transportation improvement programs, and other information necessary to distribute funds under the Tribal Transportation Allocation Methodology in the final rule to be published as required by section 1115 of TEA–21.

Comment: One commentor supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds to level the playing field for small tribes. The commentor requested consideration of a special set-aside of at least 5 percent of IRR program funds for very small tribes.

Response: Funding for ACB in fiscal years 2001 and 2002 was included to provide the opportunities for tribes to apply for a specific amount of funds to perform transportation related activities. The Secretary distributed funds in those years according to the TEA–21 Negotiated Rulemaking Committee's recommendation. Each federally recognized tribe had the opportunity to apply for $35,000 for ACB for transportation related activities. A special set-aside of any amount of IRR program funds within this distribution would need to be negotiated within the amounts available to each region of the BIA.

Comment: One commentor supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds to assist smaller villages in updating their road inventories and allow villages to participate in the development of their economies.

Response: Updating inventories is an eligible activity within the available funding under the IRR authorized funds. The interim formula for the current fiscal year will provide tribes with the critical resources to develop inventory data, long-range transportation plans, transportation improvement programs, and other information necessary to distribute funds under a new funding formula to be put in place for fiscal year 2004.

Comment: One commentor supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds and including ACB funds in future fiscal year distributions. The commentor also requested adequate consultation, annual disclosure of takedowns and national breakdown of each tribal government's allocation of IRR Program funds.

Response: Providing funds for ACB in fiscal years 2001 and 2002 as part of the distribution of funds was specific to those years based on available funds. ACB funds for those years were expressly not to be considered precedential in future distributions as stated in the funding rules published for

fiscal years 2001 and 2002. Negotiated rulemaking under Title 5, U.S.C., allowed for the public and tribes to participate in the development of recommendation of a new formula for the IRR Program and recommendations for interim funding distribution. The Secretary publishes on an annual basis a breakdown of formula percentages as computed by the relative need formula. This breakdown includes the specific amounts of funds available to the BIA regions by tribe and the statutory takedowns for the IRR program.

Comment: Eleven commenters support including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds and do not support BIA's proposal to distribute the remaining 25 percent of fiscal year 2003 IRR Program funds. The commenters state that the **Federal Register** notice states that BIA will distribute fiscal year 2003 IRR Program funds in the same manner as in fiscal year 2000, but that BIA is not proposing including up to $50,000 per tribe for special planning funds as it did in fiscal year 2000. The commenters also disagree with the **Federal Register** notice statement that BIA conducted consultation and coordination with tribal governments for distribution of fiscal year 2003 IRR Program funds because negotiated rulemaking is not consultation. In addition, one commentor also noted that the funding formula is deficient and does not allow for different modes of transportation which decreases the available funding.

Response: The fiscal year 2003 distribution, as well as the distribution for fiscal years 2001 and 2002, is consistent with the method of distribution of IRR Program funds in the **Federal Register** on February 15, 2000. In fiscal year 2000, the Secretary distributed IRR Program funds under the relative need formula identified in 23 U.S.C. 204 (65 FR 7431, Feb. 15, 2000) and special funds provided as part of a request for projects and distributed to tribal governments and BIA regional offices for transportation planning and bridge designs (65 FR 12026, March 7, 2000). Funding for the $18.3 million fiscal year 2000 IRR funds was a separate **Federal Register** publication and not part of the regular IRR Program funds distribution. Negotiated rulemaking under Title 5, U.S.C., provides consultation allowed for the public and tribes to participate in the development of recommendation of a new formula for the IRR Program and recommendations for interim funding distribution. However, for fiscal year 2003, the tribal caucus of the negotiated rulemaking committee was unable to make a consensus recommendation to the full Committee for distributing fiscal year 2003 IRR Program funds. However, the tribal caucus recommended that the Secretary identify fiscal year sources other than IRR Program funds to include ACB funds in the distribution for fiscal year 2003. Without a tribal caucus consensus on how to distribute fiscal year 2003 IRR Program funds, the Committee, under its protocols, could not make a recommendation to the Secretary as to how to distribute fiscal year 2003 IRR Program funds. Without a recommendation from the Committee, the Secretary must determine how to distribute fiscal year 2003 IRR Program funds. The Secretary could not identify another funding source for ACB.

Comment: One commentor supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds. The commentor also stated that the relative need formula the 1993 version is no longer valid because BIA's distribution of IRR program funds in fiscal years 2000, 2001, 2002, superceded any previous formula. The commentor also disagreed that BIA is using the same distribution method in fiscal year 2003 as it used in fiscal year 2000, 2001 and 2002, since BIA is not including ACB in the fiscal year 2003 distribution of IRR Program funds.

Response: The relative need formula as used in fiscal years 2000, 2001, and 2002 distribution of IRR Program funds could only be used by rule because of statutory provisions in Title 23, U.S.C. Therefore in each of these years the Secretary published a temporary rule applicable only to the current year. The inclusion of ACB in fiscal years 2001 and 2002 is a direct result of the recommendation of the TEA–21 Negotiated Rulemaking Committee.

Comment: One commentor supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds because ACB is an essential source of funding. The commentor also requested the continuation of $35,000 per year per tribe for ACB, or a minimum allocation of $48,000 per year per tribe to maintain a transportation department compliant with current BIA requirements.

Response: The tribal caucus could not agree on the ACB and could not make a recommendation to the full committee, and could not agree on the ACB and therefore it was not included in the fiscal year 2003 distribution of IRR Program funds.

Comment: One commentor supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds. In addition, the commentor requests that BIA identify other sources of funds for ACB.

Response: BIA could not identify any new sources of funds to support the continued implementation of ACB.

Comment: Four commenters supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds because under the new distribution formula, that will be effective in fiscal year 2004, inventory updates are necessary and ACB will be required for the updates. In addition, the commenters state that BIA cannot distribute fiscal year 2003 funds without ACB and without further action of the TEA–21 Negotiated Rulemaking Committee. The commenters also state that under TEA–21, after 1999, BIA's authority to distribute IRR Program funds ended. The commenters further indicate that BIA should identify alternate sources of funding for ACB.

Response: The interim formula for the current fiscal year will provide tribes with the critical resources to develop inventory data, long-range transportation plans, transportation improvement programs, and other information necessary to distribute funds under a new funding formula to be put in place for fiscal year 2004. The Committee could not make a recommendation to the Secretary because no consensus was reached regarding the use of ACB. There are no additional sources of funding available to the Secretary for ACB. In addition, the proposed and final rule the TEA–21 Negotiated Rulemaking Committee developed has no provision for ACB.

Comment: One commentor supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds because BIA is not authorized to distribute the remaining 25 percent without including ACB funds without a recommendation from the Committee. In addition, the commentor asserts that BIA should have included reference to the special funds for planning and bridge design distributed in fiscal year 2000. The commentor also disagrees with the **Federal Register** notice statement that BIA conducted consultation and coordination with tribal governments for distribution of fiscal year 2003 IRR Program funds. The commentor asserts that because only the tribal caucus of the Negotiated Rulemaking Committee discussed the fiscal year 2003 distribution of IRR Program funds and the tribal co-chairs were not authorized to separately agree to any distribution method in fiscal year 2003, the Secretary did not consult with tribal governments. The commentor also noted that if ACB funds are included in

the distribution, there would be no object to a reduction to ACB proportionate to the reduction in IRR Program funds, or, alternatively, to return the remaining funds to FHWA for distribution in fiscal year 2004 under the new Tribal Transportation Allocation Methodology that will be part of the final rule for Indian Reservation Roads.

Response: In fiscal year 2000, the Secretary distributed IRR Program funds as part of the relative need formula as identified in 23 U.S.C. 202 (65 FR 7431, Feb. 15, 2000) and special funds provided as part of a request for projects and distributed to tribal governments and BIA regional offices for transportation planning and bridge designs (65 FR 12026, March 7, 2000). This fiscal year 2003 distribution, as well as the distribution for fiscal years 2001 and 2002, is consistent with the distribution of IRR Program funds as published in the **Federal Register** on February 15, 2000. Funding for the $18.3 million Fiscal Year 2000 Indian Reservation Roads Funds was a separate **Federal Register** publication and not part of the regular IRR Program funds distribution. The **Federal Register** published on March 7, 2000 states: What Are the Additional Fiscal year 2000 IRR Funds? These additional IRR Program funds are provided as part of the Department of Transportation and Related Agencies Appropriations Act for fiscal year 2000, Public Law 106–69. These funds are not part of other funding as authorized in 23 U.S.C. 202 or as distributed under 25 CFR 170.4b (65 FR 7431, Feb. 15, 2000).

The tribal caucus of the negotiated rulemaking committee was unable to make a consensus recommendation to the full Committee on distributing fiscal year 2003 IRR Program funds. However, the tribal caucus recommended that the Secretary identify sources other than IRR Program funds to include ACB funds in the distribution for fiscal year 2003. Without a tribal caucus consensus on how to distribute fiscal year 2003 IRR Program funds, the Committee, under its protocols, could not make a recommendation to the Secretary as to how to distribute fiscal year 2003 IRR Program funds. Without a recommendation from the Committee, the Secretary must determine how to distribute fiscal year 2003 IRR Program funds. The Secretary could not identify another funding source for ACB.

How Will the Secretary Distribute the Remaining 25 Percent of Fiscal Year 2003 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute the remaining 25 percent (approximately $50 million) of fiscal year 2003 IRR Program funds based on the current relative need formula used in fiscal years 2000, 2001, 2002 and in the first distribution in fiscal year 2003. We are using the latest indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process.

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this rule is not an economically significant regulatory action because it will not have an annual effect of more than $100 million on the economy. The total amount available for distribution of fiscal year 2003 IRR Program funds is approximately $208 million and we are distributing approximately $50 million under this rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2003 IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR Program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR Program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the second partial distribution of fiscal years 2000, 2001 and 2002 IRR Program funds and the first partial distribution of fiscal year 2003 IRR funds. Approximately 1,300 road and bridge construction projects are at various phases that depend on this fiscal year's IRR Program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This rule continues to adopt the relative need formula that we have used since 1993.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this rule because it applies only to tribal governments, not state and local governments.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it does not have an annual effect on the economy of $100 million or more. We are distributing approximately $50 million under this rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to Indian tribal governments and tribal organizations for transportation planning, road and bridge construction, and road improvements. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this

rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of $100 million or greater in any year. The effect of this rule is to immediately provide the remaining 25 percent of fiscal year 2003 IRR Program funds to tribal governments for ongoing IRR activities and construction projects.

Takings Implications (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This rule should not affect the relationship between state governments and the Federal Government because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. We are still pursuing the TEA–21 mandated negotiated rulemaking process. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to the remaining 25 percent of fiscal year 2003 IRR Program funding.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

National Environmental Policy Act

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments of November 6, 2000 (65 FR 218), we have consulted with tribal representatives throughout the negotiated rulemaking process. Distributing IRR Program funds under this rule has tribal implications in that transportation planning and projects rely on this funding. Distributing funds under this rule does not impose direct compliance costs on Indian tribal governments and does not preempt tribal law. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects. We have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993 to distribute IRR Program funds.

The TEA–21 Negotiated Rulemaking Committee tribal representatives agreed that we use the funding method for distributing IRR Program funds we have used since 1993, for fiscal years 2000, 2001, and 2002. However, the tribal representatives disagreed about reserving IRR Program funds (approximately $20 million from the remaining $50 million) to distribute $35,000 to each federally recognized tribe for ACB for fiscal year 2003 because it could not identify a source for ACB funds. We reserved ACB funds in fiscal years 2001 and 2002 and distributed $35,000 to each federally recognized tribe in each year. For fiscal year 2003, however, since there is no consensus to provide ACB funds, the method of formula distribution of all available funds will reflect the same distribution as in fiscal years 2000, 2001, and 2002 without reserving funds for ACB.

List of Subjects in 25 CFR Part 170

Highways and Roads, Indians-lands.

■ For the reasons set out in the preamble, we are amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

■ 2. Revise § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute the remaining 25 percent of fiscal year 2003 Indian Reservation Roads Program funds?

On August 14, 2003 we will distribute the remaining 25 percent of fiscal year 2003 IRR Program funds authorized under section 1115 of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 154. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. The formula has been modified to account for non-reporting states by inserting the latest data reported for those states for use in the relative need formula process.

Dated: July 31, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–20776 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–107]

RIN 1625–AA08

Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for ''Atlantic City Salutes 100th Anniversary of Powered Flight'',

an aerial demonstration to be held over the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Atlantic Ocean adjacent to Atlantic City, New Jersey during the aerial demonstration.

DATES: This rule is effective from 10:30 a.m. on August 26, 2003 to 3 p.m. on August 27, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–107 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. The event will take place on August 26 and 27, 2003. Publishing an NPRM would be contrary to the public interest, since immediate action is needed to ensure the safety of spectator craft and other vessels transiting the event area in the Atlantic Ocean adjacent to Atlantic City, New Jersey. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. However, advance notifications will be made to affected users of the waterway via marine information broadcasts and area newspapers.

Background and Purpose

On August 26 and 27, 2003, the Borgata Hotel will sponsor the ''Atlantic City Salutes 100th Anniversary of Powered Flight''. The event will consist of high performance jet aircraft performing aerial maneuvers over the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. A fleet of spectator vessels is expected to gather nearby to view the aerial demonstration. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. The regulated area includes a section of the Atlantic Ocean approximately 2.5 miles long, extending approximately 900 yards out from the shoreline. The temporary special local regulations will be enforced from 10:30 a.m. to 3 p.m. on August 26 and 27, 2003, and will restrict general navigation in the regulated area during the aerial demonstration. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Atlantic Ocean adjacent to Atlantic City, New Jersey during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portion of the Atlantic Ocean during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 10:30 a.m. to 3 p.m. on August 26 and 27, 2003. Vessels desiring to transit the event area will be able to navigate safely around the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233 through 1236; Department of Homeland Security Delegation No. 0170.1, 33 CFR 100.35.

■ 2. Add a temporary § 100.35–T05–107 to read as follows:

§ 100.35-T05–107 Atlantic Ocean, Atlantic City, NJ.

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

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

(3) *Regulated Area.* All waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′31″ N, longitude 074°25′04″ W, to latitude 39°21′08″ N, longitude 74°24′48″ W, thence southwesterly to latitude 39°20′16″ N, longitude 074°27′17″ W, thence northwesterly to a point along the shoreline at latitude 39°20′44″ N, longitude 74°27′31″ W, thence northeasterly along the shoreline to latitude 39°21′31″ N, longitude 074°24′04″ W. All coordinates reference Datum NAD 1983.

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

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

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(c) *Enforcement period.* This section will be enforced from 10:30 a.m. to 3 p.m. on August 26 and 27, 2003.

Dated: August 5, 2003.

Sally Brice-O'Hara,

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

[FR Doc. 03–20771 Filed 8–13–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 03–007]

RIN 1625–AA00

Security Zone; Long Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard proposes to establish a security zone in the waters adjacent to Pier T126 in San Pedro Bay, Long Beach, CA. This action is needed to protect the U.S. Naval vessel(s) and their crew(s) during military outload evolutions at Pier T126 from sabotage, or other subversive acts, accidents, criminal actions or other causes of a similar nature. Entry, transit, or anchoring in this zone is prohibited unless authorized by the Captain of the Port (COTP) Los Angeles-Long Beach, or his designated representative.

DATES: This rule is effective from 6 a.m. (PDT) on August 2, 2003, to 6 a.m. (PDT) on September 1, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Los Angeles-Long Beach 03–007] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/

Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ryan Manning, USCG, Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Final dates and other logistical details for the event were not provided to the Coast Guard in time to draft and publish an NPRM or a temporary final rule 30 days prior to the event, as the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to protect persons, vessels and others in the maritime community from the hazards associated with the offloading operations.

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

Background and Purpose

The United States Navy will conduct military outload operations from Long Beach Pier T126. These operations involve the offloading of equipment onboard a Military Sealift Command (MSC) vessel for the furtherance of our national security. These offload evolutions are often directed at a moments notice. In an effort to protect the offload evolution and provide adequate notice to the public, the Captain of the Port of Los Angeles-Long Beach proposes to establish a temporary security zone around the Long Beach Pier T126 which will be actively enforced when the military offload evolution occurs.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended The Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways.

In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard proposes to establish a temporary security zone in the navigable waters of the United States adjacent to the Long Beach Pier T126. The action proposed under this rule is necessary to protect the U.S. Naval vessel(s) and their crew(s) during these military outload evolutions at Long Beach Pier T126 from sabotage, or other subversive acts, accidents, criminal actions or other causes of a similar nature.

Discussion of Rule

Due to National Security interests, the implementation of this security zone is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for the U.S. Naval vessel(s), their crew(s), adjoining areas, and the public.

The military outload evolutions involve the transfer of military equipment from a MSC vessel to a shore side staging area. The security zone will accompany other security measures implemented at Long Beach Pier T126 waterfront facility.

Due to complex planning, national security reasons, and coordination with all military schedules, information regarding the precise location and date of the military outload will not be circulated, however, prior to the outload evolution, the public will be notified that the security zone is in effect and will be enforced actively. The notice of active enforcement of the security zone will be announced via broadcast notice to mariners, local notice to mariners, or by any other means that is deemed appropriate.

This security zone is established pursuant to the authority of the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations. Vessels or persons violating this section are subject to he penalties set forth in 50 U.S.C. 192 which include seizure and forfeiture of the vessel, a monetary penalty of not more than $12,500, and imprisonment for not more than 10 years.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to the zone, the effect of this regulation will not be significant because: (i) The zone will encompass only a small portion of the waterway; (ii) vessels will be able to pass safely around the zones; and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the U.S. Naval vessel, their crew, and the public. Accordingly, full regulatory evaluation under the regulatory policies and procedures of the DHS is unnecessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Most of the traffic in this area is recreational traffic and sightseers. The economic impact is minimal by having them gain permission to transit through the zone from the COTP or his representative. The Coast Guard has coordinated with known private business owners in an effort to reduce any substantial impact on business.

Assistance for Small Entities

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

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

Collection of Information

This rule calls for no new collection of information 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 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A ''Categorical Exclusion Determination'' and checklist are available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new § 165.T11–075 to read as follows:

§ 165.T11–075 Security Zone; Waters Adjacent to Long Beach Pier T126.

(a) *Location.* The security zone consists of all waters, extending from the surface to the sea floor, within a 500-yard radius of a MSC vessel, while the vessel is moored at Long Beach T126.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into, transit through, or anchoring within the security zone by all vessels is prohibited during military outloads, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this section.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 1–800–221–USCG or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by the Long Beach Police Department.

Dated: July 30, 2003.

Peter V. Neffenger,

Captain, Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 03–20770 Filed 8–13–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–60, GA–61–200332(a); FRL–7543–9]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to direct final rule.

SUMMARY: This document contains corrections to the codification of a direct final rule published on July 9, 2003, (68 FR 40786). The rule being corrected pertained to ''excess emissions.''

DATES: This correction is effective September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory

Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 9, 2003, EPA published a **Federal Register** document granting direct final approval to revisions of the Georgia State Implementation Plan (SIP) which were submitted by the State on July 1, 2002. Included in that submittal were revisions to Georgia's rule 391–3–1–.02(2)(a)(7) ''Excess Emissions.'' However, the State did not request that this revision be incorporated into the federally approved SIP.

Need for Correction

As published, the direct final rule contains an incorrect approval of a revision to the Georgia SIP. This error was published in the first column on page 40788. Unless this error is corrected rule approval would be incorrectly granted. EPA regrets any inconvenience that this incorrect approval has caused.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 23, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.570(c), the entry for ''391–3–1–.02(2)(a) General Provisions'' is revised to read as follows:

§ 52.570 Identification of Plan

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	
391–3–1–.02(2)(a)	General Provisions	01/09/91	01/26/93 58 FR 6093	
*	*	*	*	

* * * * *

[FR Doc. 03–20637 Filed 8–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[KY–200334(a); FRL–7542–6]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants; Commonwealth of Kentucky and Jefferson County, KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Commercial and Industrial Solid Waste Incineration (CISWI) units section 111(d) negative declaration submitted by the Commonwealth of Kentucky (state) and Jefferson County, Kentucky (local). This negative declaration certifies that CISWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in the Commonwealth of Kentucky and Jefferson County, Kentucky.

DATES: This direct final rule is effective October 14, 2003 without further notice, unless EPA receives adverse comment by September 15, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted by mail to: Joydeb Majumder, Air Toxics and Monitoring Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier; please follow the detailed instructions described in sections I.B.1.i. through iii. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder, Air Toxics and Monitoring Branch, or Michele Notarianni, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Majumder can also be reached by telephone at (404) 562–9121 and via electronic mail at *majumder.joydeb@epa.gov*. Ms. Notarianni may be reached by telephone at (404) 562–9031 and via electronic mail at *notarianni.michele@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under KY–200334. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency

Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contacts listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State and Local Air Agency. Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382). Air Pollution Control District of Jefferson County, 850 Barrett Avenue—Suite 200, Louisville, Kentucky 40204. (502/574–6000)

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

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 at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking KY–200334'' 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.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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. *E-mail.* Comments may be sent by electronic mail (e-mail) to *majumder.joydeb@epa.gov*. Please include the text ''Public comment on proposed rulemaking KY–200334'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, 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.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Joydeb Majumder, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text ''Public comment on proposed rulemaking KY–200334'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Joydeb Majumder, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Analysis of Submittal

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(d) for new sources of the same type, and EPA has established emissions guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

The emission guidelines for CISWI units were promulgated in December 2000, and the emission guidelines are codified at 40 CFR part 60, subpart DDDD. Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Part 62 of the CFR provides the procedural framework for the submission of these plans. When designated facilities are located under the jurisdiction of a state and local, state and local agencies must develop and submit a plan for their respective jurisdictions for the control of designated pollutants. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutants in the state and local, the state and local may submit a letter of certification to that effect, or negative declaration, in lieu of a plan. The negative declaration exempts the state and local from the requirements of subpart B for that designated pollutant.

III. Final Action

The Commonwealth of Kentucky and Jefferson County, Kentucky have determined that there are no existing sources in the Commonwealth and in the County subject to the CISWI units emission guidelines. Consequently, the Commonwealth of Kentucky and Jefferson County, Kentucky, have submitted letters of negative declaration certifying this fact. EPA is taking final action to approve these negative declarations.

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 state negative declarations should adverse comments be filed. This rule will be effective October 14, 2003 without further notice unless the Agency receives adverse comments by September 15, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 14, 2003 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 14, 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 40 CFR Part 62

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: July 23, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 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: 42 U.S.C. 7401 *et seq.*

Subpart S—Kentucky

■ 2. Subpart S is amended by adding an undesignated center heading and § 62.4372 to read as follows:

Air Emissions From Commercial and Industrial Solid Waste Incineration Units

§ 62.4372 Identification of plan—negative declaration.

Letters from the Commonwealth of Kentucky Department for Environmental Protection, and from the Jefferson County, Kentucky, Air Pollution Control District were submitted on March 5, 2001, and April 21, 2003, certifying that there are no Commercial and Industrial Solid Waste Incineration units subject to 40 CFR part 60, subpart DDDD.

[FR Doc. 03–20428 Filed 8–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–7544–1]

RIN 2060–AJ77

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-Board Diagnostic Regulations for: Light-Duty Vehicles, Light-Duty Trucks, Medium Duty Passenger Vehicles, Complete Heavy Duty Vehicles and Engines Intended for Use in Heavy Duty Vehicles Weighing 14,000 Pounds GVWR or Less; Extension of Acceptance of California OBD II Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: Due to receipt of adverse comments, EPA is withdrawing two specific regulatory revisions included in the direct final rule that was published in the **Federal Register** on June 17, 2003 (68 FR 35792) related to EPA's On-board Diagnostics (OBD) regulations. EPA published both the direct final rule and a concurrent notice of proposed rulemaking to amend and revise certain provisions of the Federal OBD regulations for purposes of updating the acceptable version of the California OBD II regulations, that allows compliance with California OBD II regulations to satisfy Federal OBD regulations, and to update the incorporation by reference of standardized practices developed by the Society of Automotive Engineers (SAE) and the International Organization for Standardization (ISO) to incorporate recently published versions. The only provisions being withdrawn are the provisions that prohibit the use SAE J1939 beyond the 2007 model year.

DATES: 40 CFR 86.005–17(h)(3) and 86.1806–05(h)(3) of the direct final rule published at 68 FR 35792, (June 17, 2003) are withdrawn as of August 14, 2003.

ADDRESSES: All comments and materials relevant to today's action are contained in Public Docket No. OAR–2003–0080 at the following address: U.S. Environmental Protection Agency (EPA), EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Docket: Materials relevant to this rulemaking are contained in Public Docket Number OAR–2003–0080 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Arvon L. Mitcham, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105, Telephone 734–214–4522, or Internet e-mail at ''*mitcham.arvon@epa.gov.*''

SUPPLEMENTARY INFORMATION: We stated in the direct final rule published at 68 FR 35792 (June 17, 2003) that if we received adverse comment on the direct final rule by July 17, 2003, we would publish a timely withdrawal in the **Federal Register**. We have received adverse comments on the amendments to the following sections: 40 CFR 86.005–17, subsection (h), paragraph (3), and § 86.1806–05, subsection (h), paragraph (3). We received comments from the Engine Manufacturers Association (EMA) that the direct final rule does not extend the allowance to use the heavy-duty communication protocol, or SAE J1939, beyond the 2007 model year for vehicles that are not optionally certified to CARB's 1968.2 OBD II requirements. They commented that the direct final rule requires that 2008 and later model year heavy-duty engines and vehicles under 14,000 lbs. GVWR that are certified to the Federal OBD technical monitoring requirements must use the ISO 15765–4.3 communication protocol. EMA commented that this is not consistent with CARB's requirements, nor is it consistent with the existing communication protocols developed for the unique operational characteristics of heavy-duty vehicles. We will address this adverse comment more fully in a forthcoming final rulemaking based on the concurrent notice of proposed rulemaking published on June 17, 2003 (68 FR 35830).

In addition, EPA received comments from the Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers requesting clarification of certain aspects of the direct final rule. These comments did not request withdrawal of the rule, and EPA does not consider

these comments adverse. We are not withdrawing any sections of the direct final rule based on these comments. As noted above, we will soon issue a final rule based on the concurrent notice of proposed rulemaking and we will address these comments as appropriate at that time.

List of Subjects in 40 CFR Part 86

Environmental protection, Incorporation by reference, Administrative practice and procedure, Motor vehicle pollution, On-board diagnostics.

Dated: August 6, 2003.

Robert Brenner,

Acting Assistant Administrator, for Office of Air and Radiation.

[FR Doc. 03–20638 Filed 8–13–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 177, 178, 179 and 180

[Docket No. RSPA–02–13773 (HM–218B)]

RIN 2137–AD73

Hazardous Materials; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations by incorporating miscellaneous changes based on petitions for rulemaking and RSPA initiatives. The intended effect of these regulatory changes is to update, clarify or provide relief from certain regulatory requirements.

DATES: *Effective Date:* The effective date of these amendments is October 1, 2003.

Incorporation by Reference Date: The incorporation by reference of certain publications listed in these amendments is approved by the Director of the Federal Register as of October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Gigi Corbin, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

This final rule will primarily reduce regulatory burdens on industry by incorporating changes into the Hazardous Materials Regulations (HMR) based on RSPA's own initiatives and petitions for rulemaking submitted in accordance with 49 CFR 106.95. In a continuing effort to review the HMR for necessary revisions, RSPA (''we'' and ''us'') is eliminating, revising, clarifying and relaxing regulatory requirements. On January 21, 2003, RSPA published a Notice of Proposed Rulemaking (NPRM) under Docket RSPA–02–13773 (HM–218B; 68 FR 2734). The NPRM contained information concerning each proposal and invited public comment. Readers should refer to the NPRM for additional background discussion.

RSPA received eleven comments in response to the NPRM. These comments were submitted by representatives of trade associations, such as the American Chemical Council, the American Pyrotechnics Association, and the Chlorine Institute; hazardous materials consulting firms; chemical manufacturers; and carriers of hazardous materials. Most commenters expressed support for various proposals, but several commenters raised concerns about certain provisions in the proposal that are discussed below.

The following is a section-by-section summary of changes and, where applicable, a discussion of comments received.

Section-by-Section Review

Part 171

Section 171.7

We are revising this section to update certain incorporation by reference materials and are adding three new entries. We are updating the following previously approved pamphlets and standards:

—CGA Pamphlet C–6.2, Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, 1996 edition. The 1996 edition of CGA Pamphlet C–6.2 simply makes editorial changes to the 1988 edition.

—CGA Pamphlet C–11, Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, 2001 edition. This new edition of CGA Pamphlet C–11 adds Transport Canada requirements and clarifies existing text.

—CGA Pamphlet C–13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, 2000 edition. This new edition of CGA Pamphlet C–13 adds acetylene cylinders to the rejection criteria, allows condemned acetylene cylinders to be permanently marked as such, and changes the time parameters for requalification of the porous mass.

—CGA Pamphlet S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 2001 edition (with the exception of paragraph 9.1.1.1). This new edition adds a definition and requirements for the new PRD CG–10 device.

—NFPA 58—Liquefied Petroleum Gas Code, 2001 edition.

We are also incorporating by reference the 2001 edition of the American Pyrotechnics Association's Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, which establishes a ten-inch limit on aerial shells for fireworks that may be classed as Division 1.3 explosives.

We are updating the entry for the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002 by adding the 2000 edition and removing the entries for the 1992 and 1996 edition.

We are adding the American Society for Testing and Materials (ASTM) E 114–95 test method for straight beam examination of the tubular surface of cylinders and tubes which is used in conjunction with ASTM E 213–98 to measure the wall thickness of a cylinder and to detect general corrosion and defects located in the path of the ultrasonic straight beam direction. ASTM E 213–98 was incorporated by reference in a final rule published in the **Federal Register** on August 8, 2002 (Docket HM–220D, 67 FR 51626). Two commenters requested we incorporate by reference the ASTM E 114–95 (2001) test method and the ASTM E 213–02 to reflect the latest version of these standards. Because we did not propose to incorporate the newer editions of these standards in the NPRM, we are not incorporating them at this time. These standards may be considered for incorporation by reference in a future rulemaking.

We are also adding the Chlorine Institute's booklets entitled ''Chlorine Institute Emergency Kit 'A' for 100-lb. & 150-lb. Chlorine Cylinders'' and ''Chlorine Institute Emergency Kit 'B' for Chlorine Ton Containers''. (See § 173.3 preamble discussion.)

Section 171.15

In the NPRM we proposed to move a shipper requirement to notify the Bureau of Explosives (BOE) whenever a rail car containing a time-sensitive product is not received by the consignee within 20 days from shipment from

§§ 173.314(g)(1) and 173.319(a)(3) to § 171.15. We also proposed to require notification to the Federal Railroad Administration (FRA) instead of the BOE by ''the person with knowledge (shipper or carrier).'' Commenters generally supported notification to the FRA, however, two commenters opposed moving the reporting requirements into § 171.15 because ''the reporting requirement for late delivery of time sensitive materials does not meet the criteria of reporting under § 171.15.'' The commenters opposed assignment of the reporting responsibility to ''the person with knowledge (shipper or carrier)'' and said this language is not specific enough and could cause ''instances of noncompliance'' where the shipper believes the carrier is the ''person with knowledge'' and vice versa. Commenters are also divided on who should be assigned the reporting responsibility. Some commenters want the responsibility assigned to the shipper, others to the carrier. Another commenter objected to having to choose from multiple telephone numbers depending on time of day to report these late shipments. Based on valid concerns from commenters that the reporting requirements for late shipments do not fit the reporting criteria under § 171.15 and the various other issues raised by commenters that we need to further review, we are not adopting this proposal at this time.

Part 172

Section 172.101

We are amending the entry for ''Butylene'' by adding a limited quantity exception for compressed gases (*see* § 173.306) in column (8A) of the Hazardous Materials Table (HMT). This amendment corrects an oversight in previous rulemakings and is consistent with the entries for ''Petroleum gases, liquefied'' and other hydrocarbons.

We are adding a new domestic entry for ''Cartridges power devices, ORM–D'' to the HMT for consistency with the packaging exceptions authorized in § 173.63(b). This entry is limited to those cartridges, small arms and cartridges power devices which are authorized to be reclassed and shipped as ORM–D in § 173.63(b)(1).

For Zone B Toxic Inhalation Hazard entries with ID numbers UN3303, UN3304, UN3305, UN3306, UN3307, UN3308, UN3309, and UN3310, we are amending the HMT by adding Special Provisions B9 and B14; and for Zone C Toxic Inhalation Hazard entries with the same ID numbers, we are adding Special Provision B14. The special provisions were inadvertently omitted in previous rulemakings.

In the NPRM, we proposed to remove the letter ''I'' in column (1) of the HMT for compressed gas entries with ID numbers UN 3304, UN 3305, and UN 3306 and liquefied gas entries with ID numbers UN 3308, UN 3309 and UN 3310. The letter ''I'' identifies proper shipping names which are appropriate for describing materials in international transportation. A commenter pointed out that removal of the letter ''I'' in column 1 of the HMT from these Division 2.3 materials, which show a Class 8 subsidiary hazard, is inappropriate because the definition of Class 8 in § 173.136 is limited to solid and liquid materials. A Class 8 subsidiary hazard for Division 2.3 materials is only prescribed under international regulations. RSPA agrees with the commenter; therefore, this proposal is not adopted.

For the entry ''Liquefied gas, toxic, oxidizing, corrosive, n.o.s.'' Hazard Zones B, C and D, we are correcting a typographical error in the subsidiary labeling requirements by removing the Division 2.1 label requirement and adding the Division 5.1 label in its place.

We are revising the entry for ''Gas sample, non-pressurized, toxic, n.o.s., UN 3169'' by adding Special Provision 6 in column (7) of the HMT. The entry is classed as a Division 2.3 poisonous gas and must be described as an inhalation hazard under the provisions of the HMR. A commenter pointed out that the entry ''Gas sample, non-pressurized, toxic, flammable, n.o.s., UN 3168'' which is also a Division 2.3 gas and must be described as an inhalation hazard material, should also be assigned Special Provision 6. We agree with the commenter and are revising the entry for ''Gas sample, non-pressurized, toxic, flammable, n.o.s., UN 3168'' in the HMT accordingly.

Section 172.504

We are revising paragraph (d) to clarify that the placarding exception for non-bulk packagings containing only the residue of a hazardous material covered by table 2 does not apply to materials subject to the subsidiary placarding requirements in § 172.505 (*e.g.*, poison inhalation hazard). A material subject to the subsidiary placarding requirements in § 172.505 requires placarding for the subsidiary hazard in addition to any other required placards regardless of quantity.

Part 173

Section 173.3

We are revising § 173.3 to allow a DOT 3A480 or 3AA480 cylinder containing chlorine or sulphur dioxide (both materials poisonous by inhalation) that has developed a leak in the valve or fusible plug to be temporarily repaired using a Chlorine Institute Emergency Kit ''A'' and be transported by private or contract carrier one time, one way, from the point of discovery to the appropriate facility for discharge and examination. Similarly, we are allowing a DOT 106A500 multi-unit tank car tank containing chlorine or sulphur dioxide that has developed a leak in the valve or fusible plug to be temporarily repaired using a Chlorine Institute Emergency Kit ''B.'' We have authorized the use of the kits under the exemption program for several years with satisfactory shipping experience. Adopting these exemption provisions into the regulations will eliminate the need for an exemption and facilitate the movement of affected containers to appropriate facilities. We are also correcting a typographical error in the paragraph (d) heading to read ''DOT 106A500'' instead of ''DOT 105A500''. The commenters supported the proposal; however, several commenters requested that use of the ''A'' and ''B'' kits be extended to other specification packagings as well as to other compressed gases. Our proposal in the NPRM is based on a satisfactory shipping record under the exemption program using the ''A'' kits to temporarily repair leaking 3A480 and 3AA480 cylinders and the ''B'' kits to temporarily repair DOT 106A500 multi-unit tank car tanks containing chlorine or sulphur dioxide. Therefore, we are adopting the amendment as proposed. While other materials might develop a satisfactory shipping record if tested, neither RSPA nor FRA is aware of significant experience in the use of ''A'' or ''B'' kits for commodities other than chlorine or sulphur dioxide or for containers other than the specification 3A480/3AA480 cylinders or DOT 106A500 multi-unit tank car tanks. Proponents of this expansion have not presented sufficient or convincing evidence to substantiate a more extensive amendment to the HMR. Including other types of packagings and materials is outside the scope of this rulemaking and may be considered in a future rulemaking.

Section 173.12

We are revising § 173.12(c) to authorize the reuse of packagings for shipments of all wastes, not just waste

materials subject to EPA waste manifest requirements, to designated facilities. This includes shipments of spent/waste materials which are being returned to or shipped to an EPA licensed and certified Storage or Disposal facility, but are not subject to the Uniform Hazardous Waste Manifest requirements of the U.S. Environmental Protection Agency.

Section 173.29

We are revising paragraph (c) to clarify that the placarding exceptions for non-bulk packages containing only the residue of a § 172.504 Table 2 material do not apply to materials subject to the subsidiary placarding requirements in § 172.505. A material subject to the subsidiary placarding requirements in § 172.505 requires placarding for the subsidiary hazard in addition to any other required placards regardless of quantity.

Section 173.31

We are adding a new paragraph authorizing the continued use of existing DOT–103 and 104 tank cars, if they meet all applicable requirements. No new construction of these tanks is authorized. We are also revising paragraph (b)(2)(ii) for clarity by removing the reference to ''Chloroprene, inhibited'' since Special Provision B57 addresses the requirements for chloroprene in class DOT–115A tank cars, and by removing the last sentence since ''breather holes'' are not authorized in the HMR. In addition, we are revising paragraph (b)(5) to reflect changes to Appendix Y of the AAR Specifications for Tank Cars. This change recognizes the 2000 edition of Appendix Y in the AAR Tank Car Manual.

Section 173.35

In paragraph (b), we are adding, for purposes of clarification, a parenthetical cross-reference to § 180.352 that contains detailed requirements for retest and inspection of IBCs.

Section 173.50

We are adding a statement indicating that pyrotechnic substances and articles are considered explosives unless otherwise classed. The definition of ''explosive'' in § 173.50 previously did not specifically include pyrotechnics.

Section 173.54

We are revising paragraph (c) to forbid offering for transportation a leaking or damaged article, even if not in a package. This is in addition to the existing prohibition of offering a leaking or damaged package of explosives for transportation.

Section 173.62

We are revising paragraph (c), in the table of Packing Methods, to clarify that Packing Instruction 132(a) applies to articles with closed casings and Packing Instruction 132(b) applies to articles without closed casings.

Section 173.314

We are removing the wording ''safety relief'' and adding the wording ''reclosing pressure relief'' in its place in paragraphs (k) and (m) for consistency.

Section 173.315

Currently, the HMR appear to require that cargo tank motor vehicles (CTMVs) that transport Division 2.2 materials with a subsidiary hazard, Division 2.1 materials, and anhydrous ammonia in both metered and other than metered delivery service must be equipped with both a passive and an off-truck remote means of emergency discharge control. We are revising § 173.315(n)(1)(vi) to permit CTMVs in both metered and other than metered delivery service, with capacities of more than 3,500 water gallons, used to transport Division 2.2 materials with a subsidiary hazard, Division 2.1 materials, and anhydrous ammonia to be equipped with only a passive means of emergency discharge control, provided that the system functions for both metered and non-metered deliveries. If the system functions only for non-metered deliveries, then the CTMV must also be equipped with an off-truck remote emergency discharge control system.

Section 173.320

We are amending paragraph (a)(2) by adding the requirements in subparts G (Emergency Response Information) and H (Training) of part 172 for transportation of cryogenic liquids by rail or highway. We never intended to except shipments of cryogenic liquids from these requirements.

Part 177

Section 177.834

We are amending § 177.834(a) to require that any packaging containing a hazardous material, regardless of Class or Division, be secured against movement if the packaging is not permanently attached to a motor vehicle. We are also incorporating into paragraph (a) the closely related requirements in § 177.834(g) to prevent relative motion between the hazardous material packages themselves and between packages and the vehicle and to ensure that packages that have valves or other fittings be loaded in a manner that minimizes the likelihood of damage during transportation to the valves, other fittings or, as clarified in this final rule, other hazardous materials packages. Securement of packages containing hazardous materials to prevent movement during transportation reduces the potential for damage to packages and thus, enhances transportation safety.

Also, for consistency with similar requirements in Parts 174, 175, and 176, we are adding a new paragraph (b) to clarify that packages bearing orientation markings must be loaded in such a way that they remain in the correct position as indicated by the markings.

Section 177.835

Currently § 177.835 prohibits carrying a Division 1.1 or Division 1.2 material on any vehicle or a combination of vehicles if the other vehicle is carrying a Division 2.3 or Division 6.1 material. The segregation table in § 177.848 restricts loading and transporting of a Division 1.1 or 1.2 material with a material in Division 2.3, Hazard Zone A or B, and in Division 6.1, PG I, Hazard Zone A. For consistency with the provisions in § 177.848(d), we are revising § 177.835(c)(4)(iii) to limit the segregation restriction for a Division 1.1 or Division 1.2 explosive material to Division 2.3 materials in Hazard Zone A or B and to Division 6.1, PG I materials in Hazard Zone A.

Section 177.837

We are amending paragraph (a) to permit the diesel engine of a cargo tank motor vehicle to be running during loading and unloading of Class 3 materials if the ambient temperature is at or below −12 °C (10 °F). A motor vehicle's diesel engine is very difficult to restart if the engine is turned off in extremely cold weather for loading or unloading of product. Leaving a motor vehicle engine running in ambient temperatures of below −12 °C (10 °F) enhances operating benefits without compromising safety.

Section 177.841

We are revising paragraph (e) to expand the prohibition of transporting packagings bearing or required to bear a POISON or POISON INHALATION HAZARD label to include packagings that are placarded or required to be placarded POISON or POISON INHALATION HAZARD. Under § 172.514(c) certain small bulk packagings may either be placarded or labeled.

Part 178

Section 178.45

We are revising paragraph (h) to authorize use of the ASTM E 114 test method for straight beam examinations on the tubular surface of cylinders and tubes as stated earlier in this preamble in the discussion to § 171.7.

Part 179

We are removing the specifications and all references to class DOT–103 and 104 tanks cars from this part since new construction of these tank cars is no longer authorized. (Continued use of class DOT–103 and 104 tank cars is authorized in §§ 173.31 and 180.507.)

Section 179.1

Paragraph (a) implies that only tanks used to transport hazardous materials are subject to the jurisdiction of DOT. For consistency with §§ 171.2(c) and 180.3(a), we are revising paragraph (a) to clarify that any tank represented as a DOT specification tank, even when used to transport non-regulated commodities, is subject to the HMR.

Section 179.3

We are revising § 179.3 for clarity.

Section 179.5

We are revising this section by removing an obsolete requirement to furnish a Certificate of Construction to DOT.

Section 179.7

In paragraph (f), we are removing an outdated compliance date.

Section 179.100–13

In paragraphs (b) and (c), we are adding, for purposes of clarification, a reference to § 173.314(j), which contains excess flow valve requirements for flammable gases.

Part 179 Subpart D

In the heading for Subpart D, we are removing the reference to class DOT–103 and DOT–104 tank cars.

Section 179.200

In the section heading, we are removing the reference to class DOT–103 and DOT–104 tank cars.

Section 179.200–14

In the NPRM, we proposed to remove the reference to class DOT–103 and DOT–104 tank cars in paragraph (a). In this section, for the convenience of HMR readers, because the continued use of Class DOT 103 and 104 tank cars is authorized, we are not adopting this proposal.

Section 179.200–23

We are amending the section heading by removing the words ''safety relief'' and adding ''pressure relief'' in their place.

Section 179.200–24

We are amending the table by removing the reference to a class DOT–103W tank car and adding a reference to a class DOT–111A tank car in its place.

Section 179.201–1

We are amending the table by removing the entries for class DOT–103 and DOT–104 tank cars because new construction of these tank cars is no longer authorized. (Continued use of class DOT–103 and 104 tank cars is authorized in §§ 173.31 and 180.507.)

Section 179.201–2

Section 179.201–2 addresses minimum plate thickness for DOT specification tank cars that may no longer be constructed. Therefore, § 179.201–2 is removed and reserved.

Section 179.201–3

We are amending paragraph (b) by removing the reference to DOT–103 tank cars.

Section 179.300–17

In this final rule, in § 171.7 we are amending the ''Table of material incorporated by reference'' by updating the entry for the AAR Specifications for Tank Cars from the 1996 edition to the 2000 edition. See § 171.7 preamble discussion. Therefore, we are amending paragraph (b) for clarity and removing the reference to the January 1996 edition of the AAR Specifications for Tank Cars.

Part 180

Section 180.209

In this final rule, we are incorporating by reference CGA Pamphlet C–13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders (*see* § 171.7 preamble). CGA Pamphlet C–13 changes the time parameters for requalification of the porous mass of acetylene cylinders from ''no sooner than 3 years'' to ''no sooner than 5 years.'' Consequently, we are also revising paragraph § 180.209(i) to reflect this change.

Section 180.507

We are adding a new paragraph authorizing the continued use of DOT 103 and 104 tank cars, which may no longer be constructed.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, it was not reviewed by the Office of Management and Budget (OMB), and a regulatory assessment was not required for OMB. This final rule is not considered to be significant under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034) and, therefore, a Regulatory Analysis under the DOT order is not required.

In this final rule, we are amending miscellaneous provisions in the HMR to clarify the provisions and to relax requirements where warranted; responding to requests from industry associations to update references to standards that are incorporated in the HMR, and making certain technical corrections. These changes will enhance safety. The impact of these amendments is believed to be so minimal that a regulatory evaluation is not warranted. In the NPRM, we invited public comments on any impacts of the proposed changes. We did not receive any comments regarding the impacts of these changes.

B. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements, applicable to the transportation of hazardous materials, that cover certain subjects and are not substantively the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, content, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous materials.

This final rule concerns the classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects and preempts any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (*see* 49 CFR 107.202(d)) as the Federal requirements.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of preemption is 90 days from the publication of this final rule in the **Federal Register**.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule amends miscellaneous provisions in the HMR to clarify provisions based on our own initiative and also on petitions for rulemaking. While maintaining safety, it relaxes certain requirements that are overly burdensome and updates references to consensus standards that are incorporated in the HMR.

These amendments are generally intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities. In addition, we are updating references to standards that are incorporated in the HMR; industry associations, representing large and small entities, requested these changes.

This final rule enhances safety, and I certify that this final rule does not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

F. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

G. Environmental Assessment

There are no significant environmental impacts associated with this final rule. An environmental assessment is available in the docket for this rulemaking. We received no comments concerning environmental impacts.

H. Regulation Identifier Number (RIN)

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

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 171.7, in the paragraph (a)(3) table:

■ a. Under the entry ''American Pyrotechnics Association (APA),'' the entry is revised;

■ b. Under the entry ''American Society for Testing and Materials,'' a new entry is added in appropriate alphabetical order;

■ c. Under the entry ''Association of American Railroads,'' the first entry is removed and the second entry is revised;

■ d. Under the entry ''Chlorine Institute, Inc.,'' two new entries are added in appropriate alphabetical order;

■ e. Under the entry ''Compressed Gas Association, Inc.,'' the entries for pamphlets C–6.2, C–11, C–13, and S–1.1 are revised;

■ f. Under the entry ''National Fire Protection Association,'' the entry is revised.

The revisions and additions read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * *	* * *
American Pyrotechnics Association (APA)	
* * * *	* * *
APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version.	173.56
* * * *	* * *
American Society for Testing and Materials	
* * * *	* * *
ASTM E 114–95 Standard Practice for Ultrasonic Pulse-Echo Straight-Beam Examination by the Contact Method.	178.45
* * * *	* * *
Association of American Railroads	
* * * *	* * *
AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, December 2000.	173.31, 174.63, 179.6, 179.7, 179.12, 179.15, 179.16, 179.20, 179.22, 179.100, 179.101, 179.102, 179.103, 179.200, 179.201, 179.220, 179.300, 179.400, 180.509, 180.513, 180.515, 180.517.
* * * *	* * *
Chlorine Institute, Inc.	
* * * *	* * *
Chlorine Institute Emergency Kit ''A'' for 100-lb. & 150-lb. Chlorine Cylinders (with the exception of repair method using Device 8 for side leaks), Edition 9, June 2000.	173.3
Chlorine Institute Emergency Kit ''B'' for Chlorine Ton Containers (with the exception of repair method using Device 9 for side leaks) Edition 8, June 1996.	173.3
* * * *	* * *
Compressed Gas Association, Inc.	
* * * *	* * *
CGA Pamphlet C–6.2, Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, 1996, Third Edition.	180.205
* * * *	* * *
CGA Pamphlet C–11, Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, 2001, Third Edition.	178.35
* * * *	* * *
CGA Pamphlet C–13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, 2000, Fourth Edition.	173.303, 180.205, 180.209
* * * *	* * *
CGA Pamphlet S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 2001 (with the exception of paragraph 9.1.1.1), Ninth Edition.	173.301, 173.304a
* * * *	* * *
National Fire Protection Association	
* * * *	* * *
NFPA 58-Liquefied Petroleum Gas Code, 2001 Edition	173.315
* * * *	* * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 4. In § 172.101, the Hazardous Materials Table is amended by adding and revising, in the appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.* * * Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*		*	*	*	*		*	*			
[ADD:]													
D	Cartridges power devices *(used to project fastening devices)*.	ORM–D			None		63	None	None	30 kg gross	30 kg gross	A	
		*		*	*	*	*		*	*			
[REVISE:]													
		*		*	*	*	*		*	*			
	Butylene *see also* Petroleum gases, liquefied.	2.1	UN1012		2.1	19, T50	306	304	314, 315.	Forbidden	150 kg	E	40
		*		*	*	*	*		*	*			
GI	Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3304		2.3, 8	2, B9, B14	None	302, 305.	314, 315.	Forbidden	Forbidden	D	40
GI	Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3304		2.3, 8	3, B14	None	302, 305.	314, 315.	Forbidden	Forbidden	D	40
		*		*	*	*	*		*	*			
GI	Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3305		2.3, 2.1, 8	2, B9, B14	None	302, 305.	314, 315.	Forbidden	Forbidden	D	17, 40
GI	Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3305		2.3, 2.1, 8	3, B14	None	302, 305.	314, 315.	Forbidden	Forbidden	D	17, 40
		*		*	*	*	*		*	*			
GI	Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3306		2.3, 5.1, 8	2, B9, B14	None	302, 305.	314, 315.	Forbidden	Forbidden	D	40, 89, 90
GI	Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3306		2.3, 5.1, 8	3, B14	None	302, 305.	314, 315.	Forbidden	Forbidden	D	40, 89, 90
		*		*	*	*	*		*	*			
G	Compressed gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3303		2.3, 5.1	2, B9, B14	None	302. 305.	314, 315.	Forbidden	Forbidden	D	40
G	Compressed gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3303		2.3, 5.1	3, B14	None	302, 305.	314, 315.	Forbidden	Forbidden	D	40
		*		*	*	*	*		*	*			
	Gas sample, nonpressurized, toxic, flammable, n.o.s., *not refrigerated liquid*.	2.3	UN3168		2.3, 2.1	6	306	302	None	Forbidden	1 L	D	
	Gas sample, nonpressurized, toxic, n.o.s., *not refrigerated liquid*.	2.3	UN3169		2.3	6	306	302, 304.	None	Forbidden	1 L	D	
		*		*	*	*	*		*	*			
GI	Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3308		2.3, 8	2, B9, B14	None	304	314, 315.	Forbidden	Forbidden	D	40
GI	Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3308		2.3, 8	3, B14	None	304	314, 315.	Forbidden	Forbidden	D	40
		*		*	*	*	*		*	*			
GI	Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3309		2.3, 2.1, 8	2, B9, B14	None	304	314, 315.	Forbidden	Forbidden	D	17, 40
GI	Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3309		2.3, 2.1, 8	3, B14	None	304	314, 315.	Forbidden	Forbidden	D	17, 40
		*		*	*	*	*		*	*			
GI	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3310		2.3, 5.1, 8	2, B9, B14	None	304	314, 315.	Forbidden	Forbidden	D	40, 89, 90
GI	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3310		2.3, 5.1, 8	3, B14	None	304	314, 315.	Forbidden	Forbidden	D	40, 89, 90
GI	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone D*.	2.3	UN3310		2.3, 5.1, 8	4	None	304	314, 315.	Forbidden	Forbidden	D	40, 89, 90
		*		*	*	*	*		*	*			
G	Liquefied gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3307		2.3, 5.1	2, B9, B14	None	304	314, 315.	Forbidden	Forbidden	D	40
G	Liquefied gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3307		2.3, 5.1	3, B14	None	304	314, 315.	Forbidden	Forbidden	D	40
		*		*	*	*	*		*	*			

■ 5. In § 172.504, paragraph (d) is revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(d) *Exception for empty non-bulk packages.* Except for hazardous materials subject to § 172.505, a non-bulk packaging that contains only the residue of a hazardous material covered by Table 2 of paragraph (e) of this section need not be included in determining placarding requirements.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 6. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 44701; 49 CFR 1.45, 1.53.

■ 7. In § 173.3, a new paragraph (d) is added to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(d) *Emergency transportation of DOT 3A480 or 3AA480 cylinders and DOT 106A500 multi-unit tank car tanks.* (1) A DOT 3A480 or DOT 3AA480 cylinder containing chlorine or sulphur dioxide that has developed a leak in a valve or fusible plug may be repaired temporarily by trained personnel using a Chlorine Institute Kit ''A'' (IBR, *see* § 171.7 of this subchapter). The repaired cylinder is authorized to be transported by private or contract carrier one time, one way, from the point of discovery to a proper facility for discharge and examination.

(2) A DOT 106A500 multi-unit tank car tank containing chlorine or sulphur dioxide that has developed a leak in the valve or fusible plug may be temporarily repaired by trained personnel using a Chlorine Institute Kit ''B'' (IBR, *see* § 171.7 of this subchapter). The repaired tank is authorized to be transported by private or contract carrier one time, one way, from the point of discovery to a proper facility for discharge and examination.

(3) Training for personnel making the repairs in paragraphs (d)(1) and (d)(2) of this section must include:

(i) Proper use of the devices and tools in the applicable kits;

(ii) Use of respiratory equipment and all other safety equipment; and

(iii) Knowledge of the properties of chlorine and sulphur dioxide.

(4) Packagings repaired with ''A'' or ''B'' kits must be properly blocked and braced to ensure the packagings are secured in the transport vehicle.

■ 8. In § 173.12, paragraph (c) introductory text is revised to read as follows:

§ 173.12 Exceptions for shipments of waste materials.

* * * * *

(c) *Reuse of packagings.* A previously used packaging may be reused for the shipment of waste material transported for disposal or recovery, not subject to the reconditioning and reuse provisions contained in § 173.28 and part 178 of this subchapter, under the following conditions:

* * * * *

■ 9. In § 173.29, paragraph (c) introductory text is revised to read as follows:

§ 173.29 Empty packagings.

* * * * *

(c) Except for hazardous materials subject to § 172.505, a non-bulk packaging containing only the residue of a hazardous material covered by table 2 of § 172.504 of this subchapter—

* * * * *

■ 10. In § 173.31, a new paragraph (a)(7) is added, and paragraphs (b)(2)(ii) and the last sentence of (b)(5) are revised to read as follows:

§ 173.31 Use of tank cars.

(a) * * *

(7) A class DOT–103 or DOT–104 tank car may continue to be used for the transportation of a hazardous material if it meets the requirements of this subchapter and the design requirements in Part 179 of this subchapter in effect on September 30, 2003; however, no new construction is authorized.

(b) * * *

(2) * * *

(ii) A single-unit tank car transporting a Division 6.1 PG I or II, or Class 2, 3, or 4 material must have a reclosing pressure relief device. However, a single-unit tank car built before January 1, 1991, and equipped with a non-reclosing pressure relief device may be used to transport a Division 6.1 PG I or II material or a Class 4 liquid provided such materials do not meet the definition of a material poisonous by inhalation.

* * * * *

(b) * * *

(5) * * * Tank cars modified before July 1, 1996, may conform to the bottom-discontinuity protection requirements of appendix Y, instead of paragraphs E9.00 or E10.00 of the AAR Specifications for Tank Cars.

* * * * *

§ 173.35 [Amended]

■ 11. In § 173.35, in paragraph (b), the wording ''Initial use and reuse of IBCs.'' is removed and the wording ''*Initial use and reuse of IBCs.* (Also see § 180.352 of this subchapter.)'' is added in its place.

■ 12. In § 173.50, paragraph (a) is revised to read as follows:

§ 173.50 Class 1—Definitions.

(a) *Explosive.* For the purposes of this subchapter, an *explosive* means any substance or article, including a device, which is designed to function by explosion (*i.e.*, an extremely rapid release of gas and heat) or which, by chemical reaction within itself, is able to function in a similar manner even if not designed to function by explosion, unless the substance or article is otherwise classed under the provisions of this subchapter. The term includes a pyrotechnic substance or article, unless the substance or article is otherwise classed under the provisions of this subchapter.

* * * * *

■ 13. In § 173.54, paragraph (c) is revised to read as follows:

§ 173.54 Forbidden explosives.

* * * * *

(c) A leaking or damaged package or article containing an explosive.

* * * * *

■ 14. In § 173.62, paragraph (c) introductory text and in the Table of Packing Methods, in column 1, Packing Instructions 132(a) and 132(b) are revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) Explosives must be packaged in accordance with the following table:

* * * * *

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
* *	* *	*	* *
132(a) For articles consisting of closed metal, plastic or fiberboard casings that contian detonating explosives, or consisting of plastics-bonded detonating explosives.	Not necessary	Not necessary	Boxes.—steel (4A); aluminum (4B); wood, natural; ordinary (4C1); wood, natural, sift proof walls (4C2); plywood (4D); reconstituted wood (4F); fiberboard (4G); plastics, solid (4H2).
132(b) For articles without closed casings	Receptacles fiberboard metal plastics. Sheets paper plastics.	Not necessary	Boxes steel (4A); aluminum (4B); wood, natural, ordinary (4C1); wood, natural, sift proof walls (4C2); plywood (4D); reconstituted wood (4F); fiberboard (4G); plastics, solid (4H2).
* *	* *	*	* *

§ 173.314 [Amended]

■ 15. In § 173.314, the following changes are made:

■ a. In paragraph (k), the wording ''safety relief'' is removed and the wording ''reclosing pressure relief'' is added in its place;

■ b. In paragraph (m), the wording ''safety relief'' is removed and the wording ''reclosing pressure relief'' is added each place it appears, and in the last sentence, the wording ''Safety relief'' is removed and the wording ''Reclosing pressure relief'' is added in its place.

■ 16. In § 173.315, paragraphs (j)(2) and (k)(4) are revised and in the paragraph (n)(1) table, paragraph (vi) is added to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(j) * * *

(2) Each container must be equipped with safety devices in compliance with the requirements for safety devices on containers as specified in NFPA 58 (IBR, see § 171.7 of this subchapter).

* * * * *

(k) * * *

(4) It must conform to the applicable provisions of NFPA 58, except to the extent that provisions in NFPA 58 are inconsistent with requirements in parts 178 and 180 of this subchapter.

* * * * *

(n) *Emergency discharge control for cargo tank motor vehicles in liquefied compressed gas service.*—(1) * * *

§ 173.315(n)(1)(*)	Material	Delivery service	Required emergency discharge control capability
*	* *	* *	* *
(vi)	Division 2.2 materials with a subsidiary hazard, Division 2.1 materials, and anhydrous ammonia in a cargo tank with a capacity of greater than 13,247.5 L (3,500 water gallons).	Both metered delivery and other than metered delivery service.	Paragraph (n)(2) of this section, provided the system operates for both metered and other than metered deliveries; otherwise, paragraphs (n)(2) and (n)(3) of this section.

* * * * *

■ 17. In § 173.320, paragraph (a)(2) is revised to read as follows:

§ 173.320 Cryogenic liquids, exceptions.

(a) * * *

(2) Subparts A, B, C, D, G and H of part 172, (§§ 174.24 for rail and 177.817 for highway) and in addition, part 172 in its entirety for oxygen.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 18. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 19. In § 177.834, paragraph (a) is revised, paragraph (b) is added, and paragraph (g) is reserved, to read as follows:

§ 177.834 General requirements.

(a) *Packages secured in a motor vehicle.* Any package containing any hazardous material, not permanently attached to a motor vehicle, must be secured against movement, including relative motion between packages, within the vehicle on which it is being transported, under conditions normally incident to transportation. Packages having valves or other fittings must be loaded in a manner to minimize the likelihood of damage during transportation.

(b) Each package containing a hazardous material bearing package orientation markings prescribed in § 172.312 of this subchapter must be loaded on a transport vehicle or within a freight container in accordance with such markings and must remain in the correct position indicated by the markings during transportation.

* * * * *

(g) [Reserved]

* * * * *

■ 20. In § 177.835, the section heading and paragraph (c)(4)(iii) are revised to read as follows:

§ 177.835 Class 1 materials.

* * * * *

(c) * * *

(4) * * *

(iii) Division 2.3, Hazard Zone A or Hazard Zone B materials or Division 6.1, PG I, Hazard Zone A materials, or

* * * * *

■ 21. In § 177.837, the section heading and paragraph (a) are revised to read as follows:

§ 177.837 Class 3 materials.

* * * * *

(a) *Engine stopped.* Unless the engine of a cargo tank motor vehicle is to be used for the operation of a pump, Class 3 material may not be loaded into, or on, or unloaded from any cargo tank motor vehicle while the engine is running. The diesel engine of a cargo tank motor vehicle may be left running during the loading and unloading of a Class 3 material if the ambient atmospheric temperature is at or below − 12 °C (10 °F).

* * * * *

■ 22. In § 177.841, the section heading and paragraph (e)(1) are revised to read as follows:

§ 177.841 Division 6.1 and Division 2.3 materials.

* * * * *

(e) * * *

(1) Except as provided in paragraph (e)(3) of this section, bearing or required to bear a POISON or POISON INHALATION HAZARD label or placard in the same motor vehicle with material that is marked as or known to be foodstuffs, feed or edible material intended for consumption by humans or animals unless the poisonous material is packaged in accordance with this subchapter and is:

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 23. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 24. In § 178.45, in paragraph (h) introductory text, the first sentence is revised to read as follows:

§ 178.45 Specification 3T seamless steel cylinder.

* * * * *

(h) *Ultrasonic examination.* After the hydrostatic test, the cylindrical section of each vessel must be examined in accordance with ASTM Standard E 213 for shear wave and E 114 for straight beam (IBR, *see* § 171.7 of this subchapter). * * *

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

■ 25. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 26. In § 179.1, paragraph (a) is revised to read as follows:

§ 179.1 General.

(a) This part prescribes the specifications for tanks that are to be mounted on or form part of a tank car and which are to be marked with a DOT specification.

* * * * *

■ 27. In 179.3, paragraphs (b) and (c) are revised to read as follows:

§ 179.3 Procedure for securing approval.

* * * * *

(b) When, in the opinion of the Committee, such tanks or equipment are in compliance with the requirements of this subchapter, the application will be approved.

(c) When such tanks or equipment are not in compliance with the requirements of this subchapter, the Committee may recommend service trials to determine the merits of a change in specifications. Such service trials may be conducted only if the builder or shipper applies for and obtains an exemption.

■ 28. § 179.5 is amended as follows:

■ a. In paragraph (a), the wording ''owner, the Department, and'' is removed and the wording ''owner and'' is added in its place;

■ b. In paragraph (b), the last sentence is removed;

■ c. In paragraph (d), in the first sentence, the word ''Secretary'' is removed and the wording ''Executive Director—Tank Car Safety, AAR'' is added in its place and in the second sentence, the wording ''Bureau of Explosives'' is removed and the wording ''Executive Director—Tank Car Safety, AAR'' is added in its place; and

■ d. Paragraph (c) is revised to read as follows:

§ 179.5 Certificate of construction.

* * * * *

(c) If the owner elects to furnish service equipment, the owner shall furnish the Executive Director—Tank Car Safety, AAR, a report in prescribed form, certifying that the service equipment complies with all the requirements of the specifications.

* * * * *

■ 29. In § 179.7, paragraph (f) is revised to read as follows:

§ 179.7 Quality assurance programs.

* * * * *

(f) No tank car facility may manufacture, repair, inspect, test, qualify or maintain tank cars subject to requirements of this subchapter, unless it is operating in conformance with a quality assurance program and written procedures required by paragraphs (a) and (b) of this section.

§ 179.100–13 [Amended]

■ 30. In § 179.100–13, in paragraphs (b) and (c), the wording ''except as prescribed in § 179.102 or § 179.103'' is removed and the wording ''except as prescribed in §§ 173.314(j), 179.102 or 179.103'' is added in its place.

■ 31. In Subpart D, the heading for Subpart D is revised to read as follows:

Subpart D—Specifications for Non-Pressure Tank Car Tanks (Classes DOT–111AW and 115AW)

* * * * *

■ 32. In § 179.200, the section heading is revised to read as follows:

§ 179.200 General specifications applicable to non-pressure tank car tanks (Class DOT–111).

* * * * *

§ 179.200–14 [Amended]

■ 33. In § 179.200–14, paragraph (f) is removed.

§ 179.200–23 [Amended]

■ 34. In § 179.200–23, the section heading is amended by removing the word ''safety'' and adding the word ''pressure'' in its place.

§ 179.200–24 [Amended]

■ 35. In § 179.200–24, in the table, column 2 is amended by removing the wording ''DOT–103–W'' and adding the wording ''DOT 111A'' in its place.

§ 179.201–1 [Amended]

■ 36. In § 179.201–1, the table is amended by removing the following entries: DOT–103A–ALW, 103AW, 103ALW, 103ANW, 103BW, 103CW, 103DW, 103EW, 103W, and 104W tank cars.

§ 179.201–2 [Removed and Reserved]

■ 37. Section 179.201–2 is removed and reserved.

§ 179.201–3 [Amended]

■ 38. In § 179.201–3, in paragraph (b), the wording ''DOT–103B, 103BW, 111A60W5'' is removed and the wording ''DOT–111A60W5'' is added in its place.

■ 39. § 179.201–6 is amended as follows:

■ a. In paragraph (a), the wording ''103ALW, 103DW, 103W,'' is removed;

■ b. In paragraph (b), the wording ''103BW,'' is removed;

■ c. In paragraph (c), the wording ''DOT–103CW, 103DW, 103EW,'' is removed and the word ''DOT'' is added in its place; and

■ d. Paragraph (d) is removed.

■ 40. In § 179.300–17, paragraph (b) is revised to read as follows:

§ 179.300–17 Tests of pressure relief devices.

* * * * *

(b) Rupture disks of non-reclosing pressure relief devices must be tested and qualified as prescribed in Appendix A, Paragraph 5, of the AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002 (IBR, see § 171.7 of this subchapter).

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5151–5127; 49 CFR 1.53.

§ 180.209 [Amended]

■ 42. In § 180.209, in the paragraph (i) table, Note 2 is amended by removing the wording ''3 years'' and adding the wording ''5 years'' in its place.

■ 43. In § 180.507, paragraph (b)(5) is added to read as follows:

§ 180.507 Qualification of tank cars.

* * * * *

(b) * * *

(5) Specification DOT–103A–ALW, 103AW, 103ALW, 103ANW, 103BW, 103CW, 103DW, 103EW, and 104W tank cars may continue in use, but new construction is not authorized.

Issued in Washington, DC on August 6, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 03–20508 Filed 8–13–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 400 to 999, revised as of October 1, 2002, in § 571.217, remove the duplicated text, beginning with S5.2.2.3 on page 637 through the end of the first Table 2, in column 1 on page 638.

[FR Doc. 03–55523 Filed 8–13–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 030124019–3040–02; I.D. 073003C]

Pacific Halibut Fisheries; Oregon Sport Fisheries

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

ACTION: Inseason action; request for comments.

SUMMARY: NMFS announces changes to the regulations for the Area 2A sport halibut fisheries off the central coast of Oregon. This action would make additional potential season reopening dates available to halibut fishing in the Oregon central coast recreational fishing subarea. The purpose of this action is to allow increased access to Oregon's central coast recreational halibut quota.

DATES: Effective 0001 local time August 14, 2003, through the 2004 specifications and management measures which will publish in a later **Federal Register** document. Comments on this rule will be accepted through August 29, 2003.

ADDRESSES: Submit comments to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070. This **Federal Register** document is available on the Government Printing Office's website at: *http://www.access.gpo.gov/su__docs/aces/aces140.html*.

FOR FURTHER INFORMATION CONTACT: Jamie Goen or Yvonne deReynier (NMFS, Northwest Region) 206–526–6140.

SUPPLEMENTARY INFORMATION: The Area 2A Catch Sharing Plan for Pacific halibut off Washington, Oregon, and California is implemented in the annual management measures for the Pacific halibut fisheries published on March 7, 2003 (68 FR 10989), as amended at 68 FR 14167, March 24, 2003, at 68 FR 22323, April 28, 2003, at 68 FR 23901, May 6, 2003 and at 68 FR 39024, July 1, 2003. Those regulations established the 2003 area quota for the central coast of Oregon (Cape Falcon, OR to Humbug Mountain, OR) all-depth fishery of 229,103 lb (103.9 mt) and the related management measures. The third all-depth sport fishery season in this area, both north central and south central sub-areas, is scheduled to be open 2 days per week (Friday and Saturday) on previously announced specific dates, and the nearshore fishery (inside 30–fathoms) is scheduled for 7 days per week.

The pace of the all-depth halibut fishery has been slow off the Oregon central coast in recent years. Oregon Department of Fish and Wildlife (ODFW), the agency that directly monitors the sport halibut fishery off Oregon's coast, reports sport halibut catch in the 2003 fishery, as of June 22, 2003, to have 114,815 lb (52.1 mt) of quota remaining out of a 229,103 lb (103.9 mt) quota for the Oregon central coast fishery (combined all-depth: north central Oregon and south central Oregon, May and August). This fishery is scheduled to be open on August 1, 2, 8 and 9, and if quota remains, on one or more of the following dates: August 22 and 23, September 5, 6, 19 and 20, October 17 and 18. In order to increase opportunity for participation in sport halibut fisheries in the Oregon central coast subarea, ODFW recommended to NMFS and the International Pacific Halibut Commission (IPHC) that additional potential season reopening dates be available for the all-depth fishery. If quota remains after the previously scheduled August 1, 2, 8 and 9 opening, this change would increase the days available that a vessel could fish for halibut in the all-depth area. The additional potential reopening dates announced in this document allows flexibility in scheduling the remainder of the season and increased opportunity to attain the 2003 sport halibut quota for this subarea. ODFW hopes that by adding potential reopening dates, anglers will be able to access the full halibut quota for this subarea and not leave quota remaining, as in 2002, where about 50,000 lb (22.7 mt) of combined central coast quota remained.

Section 25 of the 2003 Pacific halibut regulations provides NMFS with the authority to make certain inseason management changes, provided that the action is necessary to allow allocation objectives to be met, and that the action will not result in exceeding the catch limit for the area. The Catch Sharing Plan's structuring objective for the Oregon north central coast area is to provide two periods of fishing opportunity in Spring and in Summer in productive deeper water areas along the

coast, principally for charterboat and larger private boat anglers, and provide a period of fishing opportunity in the summer for nearshore waters for small boat anglers. The Catch Sharing Plan's structuring objective for the Oregon south central coast area is to create a south coast management zone that has the same objectives as the Oregon central coast subarea and is designed to accommodate the needs of both charterboat and private boat anglers in the south coast subarea where weather and bar crossing conditions very often do not allow scheduled fishing trips.

In consultation with the ODFW and the IPHC, NMFS has determined that allowing the following additional potential reopening dates to sport halibut fishing in the Oregon central coast all-depth subarea: August 29 and 30, September 12, 13, 26, and 27, and October 3, 4, 10, and 11, meets the Catch Sharing Plan's objectives. Additionally, this action is not expected to result in bycatch of overfished groundfish species above the set asides for Oregon sport fisheries in 2003, particularly the 3.7 mt set aside for yelloweye rockfish.

NMFS Action

For the reasons stated above, NMFS announces the following change to the 2003 annual management measures (68 FR 10989, March 7, 2003, as amended at 68 FR 22323, April 28, 2003, at 68 FR 23901, May 6, 2003 and at 68 FR 39024, July 1, 2003) to read as follows:

1. On page 10999, in the third column, in section 24. *Sport Fishing for Halibut*, paragraph (4)(b)(v)(A)(*3*) in the third column is revised to read as follows:

24. Sport Fishing for Halibut

* * * * *

(*3*) If sufficient unharvested catch remains, the third season will open on August 1, 2, 8, and 9 or until the combined quotas for the all-depth fisheries in the subareas described in paragraphs (v) and (vi) of this section totaling 229,103 lb (103.9 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier. An announcement will be made on the NMFS hotline in mid-July as to whether the fishery will be open on August 1, 2, 8, and 9. No halibut fishing will be allowed on these dates unless the dates are announced on the NMFS hotline. If the harvest during this opening does not achieve the 229,103 lb (103.9 mt) quota, the season will reopen. Dependent on the amount of unharvested catch available, the potential season reopening dates will be: August 22, 23, 29 and 30, September 5, 6, 12, 13, 19, 20, 26 and 27, October 3, 4, 10, 11, 17 and 18. If a decision is made inseason to allow fishing on one or more of these reopening dates, notice of the reopening date will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the reopening dates unless the date is announced on the NMFS hotline.

* * * * *

2. On page 11000, in the first column, in section 24. *Sport Fishing for Halibut*, paragraph (4)(b)(vi)(A)(*3*)is revised to read as follows:

24. Sport Fishing for Halibut

* * * * *

(*3*) If sufficient unharvested catch remains, the third season will open on August 1, 2, 8, and 9 or until the combined quotas for the all-depth fisheries in the subareas described in paragraphs (v) and (vi) of this section totaling 229,103 lb (103.9 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier. An announcement will be made on the NMFS hotline in mid-July as to whether the fishery will be open on August 1, 2, 8, and 9. No halibut fishing will be allowed on these dates unless the dates are announced on the NMFS hotline. If the harvest during this opening does not achieve the 229,103 lb (103.9 mt) quota, the season will reopen. Dependent on the amount of unharvested catch available, the potential season reopening dates will be: August 22, 23, 29 and 30, September 5, 6, 12, 13, 19, 20, 26 and 27, October 3, 4, 10, 11, 17 and 18. If a decision is made inseason to allow fishing on one or more of these reopening dates, notice of the reopening date will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the reopening dates unless the date is announced on the NMFS hotline.

* * * * *

Classification

This action is authorized by the regulations implementing the Catch Sharing Plan. The determination to take these actions is based on the most recent data available. The Assistant Administrator for Fisheries, NOAA (AA), has determined that good cause exists for this document to be published without affording a prior opportunity for public comment under 5 U.S.C. 553(b)(3)(B) because doing so would be impracticable. Providing prior notice and opportunity for public comment would be impracticable because it might prevent fishers from achieving their recreational harvest opportunity for halibut within this subarea's quota for the season. NMFS has concluded, based on the slow rate of catch of halibut in Oregon's central coast recreational fishery in 2003, fishers may not have an opportunity to harvest the 2003 quota if they are limited to the season open dates established pre-season. Thus, potential season reopening dates are announced in this action for the Oregon central coast all-depth sport halibut fishery. The additional potential reopening dates are intended to allow anglers an opportunity to attain the Oregon central coast halibut quota for 2003 and flexibility in scheduling openings for any or all of those dates. However, there was not sufficient time between getting the information on the slow season catch for 2003 and the additional reopening dates to afford the public prior notice and opportunity for comment. NMFS received the information on June 27, 2003. The first new reopening date is August 29, 2003. NMFS needed time to write and review the changes to the regulations. In addition, this action relieves a restriction by providing additional opportunity for anglers to harvest halibut if sufficient quota remains. If there are no additional reopening dates added to the season, anglers may be restricted by not being able to harvest the full halibut quota for 2003. For the above reasons and because this action relieves a restriction, the AA has also determined that good cause exists to waive the delay of effectiveness of this action under 5 U.S.C. 553(d)(1) and (d)(3).

Public comments will be received for a period of 15 days after the effectiveness of this action. This action is authorized by Section 25 of the annual management measures for Pacific halibut fisheries published on March 7, 2003 (68 FR 10989), and has been determined to be not significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 773–773k.

Dated: August 8, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–20680 Filed 8–13–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 157
Thursday, August 14, 2003

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Chapters I, IX, X, and XI

[Doc. No. L&RRS–03–01]

Regulatory Flexibility Act: Review of Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Schedule for review of agency regulations.

SUMMARY: The Agricultural Marketing Service (AMS) is publishing this plan for the review of its regulations under the Regulatory Flexibility Act (RFA). AMS has included in this plan all regulations that warrant periodic review irrespective of whether specific regulations meet the threshold requirement for mandatory review established by the RFA.

FOR FURTHER INFORMATION CONTACT: Christine M. Sarcone, Director, Legislative and Regulatory Review Staff, AMS, USDA, P.O. Box 96456, Room 3510-South, Washington, DC 20090–6456, telephone: (202) 720–3203; fax number (202) 690–3767.

SUPPLEMENTARY INFORMATION:

Background

Section 610 of the RFA (5 U.S.C. 610) requires agencies to review all regulations on a periodic basis that have or will have a significant economic impact on a substantial number of small entities. Because many of AMS'' regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which although they may not meet the threshold requirement under sec. 610 of the FRA (5 U.S.C. 610) merit review.

The purpose of each review will be to determine whether the rules should be continued without change, or should be amended or rescinded (consistent with the objectives of applicable statutes) to minimize impacts on small businesses. In reviewing its rules the AMS will consider the following factors: (1) The continued need for the rule; (2) The nature of complaints or comments from the public concerning the rule; (3) The complexity of the rule; (4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with the state and local regulations; and (5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

This document updates the plan which was published on January 4, 2002 (67 FR 525). Part 998, Marketing Agreement Regulating the Quality of Domestically Produced Peanuts, was removed from the plan because of the recently passed Farm Security and Rural Investment Act of 2002 which mandated that the program be terminated and a new program created. The new program, Minimum Quality and Handling Standards for Domestic and Imported Peanuts, along with several other new programs will be reviewed in 2010. Other changes have been made in the plan to space out the reviews to allow for better program administration. The results of reviews completed can be obtained from the Legislative and Regulatory Review Staff at the telephone number provided in the **FOR FURTHER INFORMATION CONTACT SECTION** of this document. The list of reviews completed include: (1) California Almonds, June 20, 2002 (67 FR 41816; (2) ID–E. Oregon Potatoes, May 28, 2002 (67 FR 36788); (3) California Olives, March 27, 2001 (66 FR 16593); and (4) Federal Seed Act Regulations, March 22, 2001 (66 FR 16015). AMS expects to publish summaries for Florida Tomatoes (Part 966), California Prunes (Part 993), and Watermelon Research and Promotion (1210) in the near future.

The attached document announces the revised schedule for reviewing the agency's regulations.

Dated: August 7, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

AGRICULTURAL MARKETING SERVICE REVIEW PLAN FOR REGULATIONS IDENTIFIED FOR SECTION 610 REVIEW, (CY 2003) REGULATORY FLEXIBILITY ACT

CFR part & authority	AMS program/regulation	Year implemented	Year for review
7 Part 46; Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.	Perishable Agricultural Commodities Act, 1930	1930/Regs Amended 1997	2008
7 Part 110; 7 U.S.C. 136a(d)(1)(c), 136i–1, and 450; 7 Part 2.17, 2.50.	Pesticide recordkeeping	1993	2003
7 Part 205; 7 U.S.C. 6501–6522	National Organic Program	2000	2010
7 Part 905; 7 U.S.C. 601–674	Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida	1939	2007
7 Part 916; 7 U.S.C. 601–674	Nectarines Grown in California	1958	2003
7 Part 917; 7 U.S.C. 601–674	Fresh Pears and Peaches Grown in California	1939	2003
7 Part 923; 7 U.S.C. 601–674	Sweet Cherries Grown in Designated Counties in Washington	1957	2007
7 Part 925; 7 U.S.C. 601–674	Grapes Grown in a Designated Area of Southeastern California	1980	2006
7 Part 927; 7 U.S.C. 601–674	Winter Pears Grown in Oregon and Washington	1939	2005
7 Part 929; 7 U.S.C. 601–674	Cranberries Grown in States of Massachusetts, Rhode Island, etc	1962	2005
7 Part 930; 7 U.S.C. 601–674	Tart Cherries Grown in MI, NY, PA, OR, UT, WA & WI	1996	2006
7 Part 948; 7 U.S.C. 601–674	Irish Potatoes Grown in Colorado	1941	2006
7 Part 966; 7 U.S.C. 601–674	Tomatoes Grown in Florida	1955	2003
7 Part 984; 7 U.S.C. 601–674	Walnuts Grown in California	1948	2008
7 Part 989; 7 U.S.C. 601–674	Raisins Produced from Grapes Grown in California	1949	2004

AGRICULTURAL MARKETING SERVICE REVIEW PLAN FOR REGULATIONS IDENTIFIED FOR SECTION 610 REVIEW, (CY 2003) REGULATORY FLEXIBILITY ACT—Continued

CFR part & authority	AMS program/regulation	Year implemented	Year for review
7 Part 993; 7 U.S.C. 601–674	Dried Prunes Produced in California	1949	2003
7 Part 996; Secs. 1308, Pub. L. 107–171, 116 Stat. 178 (7 U.S.C. 7958).	Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States.	2003	2010
7 Parts 1000–1139; 7 U.S.C. 601–674.	Federal Milk Marketing Orders	1999	2009
7 Part 1150; 7 U.S.C. 4501–4513	Dairy Promotion Program	1984	2006
7 Part 1160; 7 U.S.C. 6401–6417	Fluid Milk Promotion Program	1993	2004
7 Part 1205; 7 U.S.C. 2101–2118	Cotton Research and Promotion	1996	2003
7 Part 1207; 7 U.S.C. 2611–2627	Potato Research and Promotion	1972	2005
7 Part 1209; 7 U.S.C. 6101–6112	Mushroom Promotion, Research and Consumer Information Order	1993	2005
7 Part 1210: 7 U.S.C. 4901–4916	Watermelon Research and Promotion Plan	1990	2003
7 Part 1215; 7 U.S.C. 7481–7491	Popcorn Promotion, Research and Consumer Information	1997	2007
7 Part 1216; 7 U.S.C. 7401–7425	Peanut Promotion, Research, and Information Order	1999	2009
7 Part 1218; 7 U.S.C. 7401–7425	Blueberry Promotion, Research, and Information Order	2000	2010
7 Part 1219; 7 U.S.C. 7801–7813	Hass Avocado Promotion, Research, and Information	2003	2010
7 Part 1220; 7 U.S.C. 6301–6311	Soybean Promotion, Research and Consumer Information	1991	2005
7 Part 1230; 7 U.S.C. 4801–4819	Pork Promotion, Research, and Consumer Information	1986	2008
7 Part 1240; 7 U.S.C. 4601–4612	Honey Research, Promotion, and Consumer Information Order	1987	2008
7 Part 1250; 7 U.S.C. 2701–2718	Egg Research and Promotion	1976	2005
7 Part 1260; 7 U.S.C. 2901–2911	Beef Promotion and Research	1986	2007

[FR Doc. 03–20692 Filed 8–13–03; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 991

[Docket No. AO–F&V–991–A3; FV03–991–01]

Hops Produced in Washington, Oregon, Idaho and California; Postponement of Hearing on Proposed Marketing Agreement and Order No. 991

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of postponement of public hearing on proposed marketing agreement and order.

SUMMARY: The public hearing scheduled to consider a proposed marketing agreement and order under the Agricultural Marketing Agreement Act of 1937 to cover hops grown in Washington, Oregon, Idaho and California has been postponed until after October 1, 2003. The notice of public hearing was announced in the **Federal Register** on Monday, July 28, 2003, at 68 FR 44244. Another notice will be published announcing the new hearing dates.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724 or Fax (503) 326–7440; or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

Authority: 7 U.S.C. 601–674.

Dated: August 8, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–20690 Filed 8–13–03; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Parts 1015 and 1018

RIN 1901–AA98

Collection of Claims Owed the United States

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend its regulations governing the collection of claims of the United States for money or property arising from activities under DOE jurisdiction. Because the revisions to DOE's debt collection standards and procedures are not expected to receive any significant adverse comment, the amendment is also being issued as a direct final rule in the ''Rules and Regulations'' section of this **Federal Register**. (*See also* ''Discussion of Direct Final Rulemaking'' in Section III of the **SUPPLEMENTARY INFORMATION** section of this notice of proposed rulemaking.)

DATES: Public comments must be received on or before September 15, 2003.

ADDRESSES: Comments (3 copies) should be addressed to: Helen O. Sherman, Director, Office of Finance and Accounting Policy (ME–10), Office of Management, Budget and Evaluation, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Philip R. Pegnato, Team Leader, Management Accounting and Cash Management Team, Department of Energy, at (301) 903–9704; or Susan A. Donahue, Accountant, Management Accounting and Cash Management Team, Department of Energy, at (301) 903–4666.

SUPPLEMENTARY INFORMATION:

I. General Information

The proposed revisions to 10 CFR part 1015, including the incorporation of tax refund offset provisions currently in 10 CFR part 1018, would conform DOE's regulations to the Federal Claims Collection Standards issued by the Department of Treasury and the Department of Justice on November 22, 2000; clarify and simplify DOE's debt collection standards; and reflect changes to Federal debt collection procedures under the Debt Collection Improvement Act of 1996 and the General Accounting

Office Act of 1996. The rule provisions and the rationale for them are described in the preamble to the direct final rule.

II. Opportunity for Public Comment

Interested persons are invited to participate by submitting data, views or arguments with respect to the rule amendments proposed in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Reading Room, Room 1E–090, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to the publication of a final rule. Any information or data that the submitter considers to be exempt from public disclosure by law must be so identified and submitted in writing (one copy), as well as one complete copy from which the information believed to be exempt from disclosure is deleted. The Department will determine if the information or data is exempt from disclosure.

DOE has not scheduled a public hearing to receive oral presentations of views, data and arguments because DOE does not believe the proposed rule presents a substantial issue of fact or law or that the proposed rule would likely have a substantial impact on the Nation's economy or large numbers of individuals or businesses. DOE will reconsider this matter if public comments show that such issues or potential impacts exist.

III. Discussion of Direct Final Rulemaking

DOE is proposing to amend its regulations governing the collection on claims of the United States for money or property arising from activities under DOE jurisdiction. In the ''Rules and Regulations'' section of today's **Federal Register**, we are approving these revisions as a direct final rule without prior proposal because we view these as noncontroversial revisions and anticipate no adverse comment. We have described the revisions and our rationale for them in the notice of direct final rulemaking. If DOE receives no significant adverse comment, the Department will not take further action on this rule. If DOE receives such an adverse comment on one or more distinct amendments, paragraphs, or sections of the direct final rule, DOE will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendments, paragraphs, or sections of the direct final rule for which we do not receive adverse comment will become effective on the date set forth in the direct final rule, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

For the various statutes and Executive Orders that require findings for each rulemaking, DOE incorporates the findings from the notice of direct final rulemaking into this companion notice for the purpose of providing public notice and opportunity for comment.

List of Subjects

10 CFR Part 1015

Administrative practice and procedure, Antitrust, Claims, Federal employees, Fraud, Penalties, Privacy.

10 CFR Part 1018

Claims, Income taxes.

Issued in Washington, on August 7, 2003.

James T. Campbell,

Acting Director, Office of Management, Budget and Evaluation/Acting Chief Financial Officer.

[FR Doc. 03–20584 Filed 8–13–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–343–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8F–54, and DC–8F–55 Airplanes; and DC–8–50, DC–8–60, DC–8–60F, DC–8–70, and DC–8–70F 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 McDonnell Douglas airplane models. For certain airplanes, this proposal would require a one-time test to determine the material of the upper inboard spar cap of the wing, or a one-time inspection to determine if the slant panel cap has been repaired previously. For most airplanes, this proposal also would require a one-time inspection for corrosion of the slant panel cap of the wing leading edge assembly, and follow-on actions. This action is necessary to prevent stress corrosion cracking in the forward tang of the upper inboard spar cap of the wing, which could result in structural damage to adjacent components of the wing and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–343–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. 2001–NM–343–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 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone 562–627–5322; fax (562) 627–5210.

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 2001–NM–343–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. 2001–NM–343–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that cracking has been found in the forward tang of the upper inboard spar cap of the wing on certain McDonnell Douglas Model DC–8–70 series airplanes. The cracking has been found on airplanes that have accumulated approximately 18,000 total flight hours. The cracking occurred between the fuselage and wing station Xfs=67.500 on the left and right sides of the airplane, and has been attributed to stress corrosion. This condition, if not corrected, could result in structural damage to adjacent components of the wing and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995. That service bulletin describes procedures for performing test or inspections between stations Xcw=69.500 and Xfs=67.500, and repairs or modifications if necessary, on three airplane groups, as follows:

- For airplanes in Group 1, the service bulletin describes procedures for a one-time eddy current conductivity test of the upper inboard spar cap of the wing to determine the type of material. For an upper inboard spar cap of certain material, the service bulletin specifies accomplishing a modification of the slant panel cap of the wing leading edge assembly per a figure in a certain chapter of the structural repair manual (SRM). For airplanes in Group 1, the service bulletin does not describe procedures for modification of the wing spar cap. (The procedures in the SRM involve performing a general visual inspection for corrosion, removing any evidence of corrosion, installing fillers, and installing an external rework doubler, as applicable.) For an upper inboard spar cap of certain other material, the service bulletin describes procedures for a visual inspection for corrosion or a previous repair of the slant panel cap of the wing leading edge assembly. The service bulletin describes procedures for a modification as a follow-on action for this inspection. That modification involves removing any corrosion, repairing the slant panel cap of the leading edge assembly or replacing it with a new slant panel cap, modifying the front spar stiffeners and upper spar cap, and installing doublers on the wing upper surface.
- For airplanes in Group 2, the service bulletin describes procedures identical to those for Group 1 airplanes, except that no conductivity test is necessary, and a previously installed repair must be removed before modifying the front spar stiffeners and upper spar cap.
- For airplanes in Group 3, the service bulletin describes procedures for a visual inspection for corrosion of the slant panel cap of the wing leading edge assembly, and a modification that involves modifying the front spar stiffeners, and replacing the slant panel cap with a new improved cap if necessary.

Accomplishment of the applicable actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Related AD

We have previously issued AD 90–16–05, amendment 39–6614 (55 FR 31818, August 6, 1990), which applies to McDonnell Douglas Model DC–8 series airplanes, as listed in McDonnell Douglas Report No. MDC K1579, Revision A, dated March 1, 1990. McDonnell Douglas Report No. MDC K1579, Revision A, specifies accomplishment of certain inspections and structural modifications in accordance with various service bulletins, including McDonnell Douglas Service Bulletin DC8–57–72, Revision 2, dated July 16, 1971; and McDonnell Douglas DC–8 Service Bulletin 57–34, Revision 3, dated December 29, 1970. Accomplishment of the actions in this proposed AD would constitute compliance with the inspections required by paragraph A. of AD 90–16–05, as it pertains to those service bulletins.

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, except as discussed below.

Clarification of Inspection Type

The service bulletin identifies the inspection for corrosion or previous repair, as applicable, as a ''visual inspection.'' However, we find that the procedures described in the service bulletin constitute a detailed inspection. A definition of this type of inspection is included in Note 1 of this AD.

Differences Between Proposed AD and Service Information

As stated previously, McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, refers to a certain figure in a certain chapter of the SRM as a source for additional information for a follow-on modification of the slant panel cap. Where that referenced figure specifies to contact the manufacturer for appropriate action, this proposed AD would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis

of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Also, while McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, states that, for airplanes listed in Group 3 of the service bulletin, modification of the front spar stiffeners may be deferred until DC–8 Service Bulletin 57–30 is accomplished, this proposed AD would not allow such a deferral. We find that the proposed 4-year compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 303 airplanes of the affected design in the worldwide fleet. The FAA estimates that 229 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes in Group 1, the electrical conductivity test would take approximately 1 work hour per airplane, at the average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed inspection is estimated to be $65 per airplane.

For airplanes subject to the inspection for corrosion or previous repairs, as applicable, and the modification, these actions would take between 110 and 416 work hours per airplane, at the average labor rate of $65 per work hour. Required parts would cost between $4,554 and $19,687. Based on these figures, the cost impact of these proposed actions is estimated to be between $11,704 and $46,727 per airplane.

The cost impact figures discussed above are 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.

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:

McDonnell Douglas: Docket 2001–NM–343–AD.

Applicability: Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8–55, DC–8F–54, DC–8F–55, DC–8–61, DC–8–62, DC–8–63, DC–8–61F, DC–8–62F, DC–8–63F, DC–8–71, DC–8–72, DC–8–73, DC–8–71F, DC–8–72F, and DC–8–73F airplanes; certificated in any category; as listed in McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking in the forward tang of the upper inboard spar cap of the wing, which could result in structural damage to adjacent components of the wing and consequent reduced structural integrity of the airplane, accomplish the following:

Group 1 Airplanes: Inspection and Follow-On Actions

(a) For airplanes in Group 1 as defined by McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995: Within 4 years after the effective date of this AD, perform a one-time eddy current conductivity test of the upper inboard spar cap of the wing to determine the type of material, per the Accomplishment Instructions of the service bulletin.

(1) If the test reveals that the upper inboard spar cap is made from 7075–T73 material (as defined in the service bulletin), before further flight, perform a detailed inspection for corrosion and modify the slant panel cap of the wing leading edge assembly per the figure and chapter of the structural repair manual (SRM) specified in the service bulletin, per the Accomplishment Instructions of the service bulletin. It is not necessary to modify the wing spar cap. The modification of the slant panel cap involves removing any evidence of corrosion, installing fillers, and installing an external rework doubler, as applicable. For conditions in which the referenced SRM figure specifies to contact the manufacturer for appropriate action: Before further flight, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface

cleaning and elaborate access procedures may be required.''

(2) If the test reveals that the upper inboard spar cap is made from 7079–T6 material, before further flight, perform a detailed inspection to find corrosion or a previous repair of the slant panel cap of the wing leading edge assembly, and accomplish the modification specified in the service bulletin, per the Accomplishment Instructions of the service bulletin. The modification involves removing any corrosion and repairing the slant panel cap of the leading edge assembly, or replacing the slant panel cap with a new improved slant panel cap, as applicable; modifying the front spar stiffeners and upper spar cap; and installing doublers on the wing upper surface.

Group 2 Airplanes: Inspection and Modification

(b) For airplanes in Group 2 as defined by McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995: Within 4 years after the effective date of this AD, perform a detailed inspection to find corrosion or a previous repair of the slant panel cap of the wing leading edge assembly, and accomplish the modification specified in the service bulletin, per the Accomplishment Instructions of the service bulletin. The modification involves removing any corrosion and repairing the slant panel cap of the leading edge assembly, or replacing it with a new improved slant panel cap, as applicable; removing any previously installed repair; modifying the front spar stiffeners and upper spar cap; and installing doublers on the wing upper surface.

Group 3 Airplanes: Inspection and Modification

(c) For airplanes in Group 3 as defined by McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995: Within 4 years after the effective date of this AD, perform a detailed inspection to find corrosion of the slant panel cap of the wing leading edge assembly, and accomplish the modification specified in the service bulletin, per the Accomplishment Instructions of the service bulletin. The modification involves modifying the front spar stiffeners, and replacing the slant panel cap with a new improved cap, as applicable.

Note 2: Although McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, states that, for airplanes listed in Group 3 of the service bulletin, modification of the front spar stiffeners may be deferred until DC–8 Service Bulletin 57–30 is accomplished, this AD does not allow such a deferral.

Certain Actions Constitute Compliance With AD 90–16–05

(d) Accomplishment of the action(s) required by this AD constitutes compliance with the inspections required by paragraph A. of AD 90–16–05, as it pertains to McDonnell Douglas Service Bulletin DC8–57–72, Revision 2, dated July 16, 1971; and McDonnell Douglas DC–8 Service Bulletin 57–34, Revision 3, dated December 29, 1970. Accomplishment of the actions required by this AD does not terminate the remaining requirements of AD 90–16–05 as it applies to other service bulletins; operators are required to continue to inspect and/or modify per the other service bulletins listed in that AD.

Alternative Methods of Compliance

(e)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOC) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company DER who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Issued in Renton, Washington, on August 7, 2003.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20715 Filed 8–13–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–13850; Airspace Docket No. 02–AEA–19]

RIN 2120–AA66

Proposed Amendment of Restricted Areas R–5802A and B; and Establishment of Restricted Areas R–5802C, D, and E, Fort Indiantown Gap, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to expand the dimensions, and increase the time of designation, of the restricted airspace at the Fort Indiantown Gap Military Reservation, PA. This proposed action would convert the existing Kiowa Military Operations Area (MOA) to restricted airspace and would establish three new restricted areas: R-5802C, D, and E. This action would raise the ceiling of restricted airspace at Fort Indiantown Gap from the current 13,000 feet above mean sea level (MSL) to Flight Level 250 (FL 250). In addition, this action would change the name of the using agency for the restricted areas. The current restricted airspace at Fort Indiantown Gap is too small to allow aircrew training in weapons delivery tactics that are used in a high anti-aircraft threat environment. The expanded restricted airspace is needed to conduct realistic aircrew training and to maintain the level of proficiency in modern tactics that is required for combat readiness.

DATES: Comments must be received on or before September 29, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify both docket numbers, FAA–2003–13850/ Airspace Docket No. 02–AEA–19 at the beginning of your comments.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Nos. FAA–2003–13850/Airspace Docket No. 02–AEA–19.'' The postcard will be date/time stamped and returned to the commenter. Send comments on

environmental and land use aspects to: National Guard Bureau, NGB/CEVP, 1411 Jefferson Davis Highway, Arlington, VA 22202–3231. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661) using a modem and suitable communications software.

Internet users may reach the FAA's web page at *http://www.faa.gov* or the Federal Register's web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may also obtain a copy of this NPRM by submitting a request to the FAA, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Background

The airspace at the Fort Indiantown Gap Military Reservation currently consists of two small restricted areas and one MOA. A MOA is a type of nonregulatory special use airspace designated by the FAA to contain certain nonhazardous military flying activities, such as air combat maneuvers, low altitude tactics, etc.

The existing restricted areas at Fort Indiantown Gap are: R–5802A, extending from 200 feet above ground level (AGL) to 5,000 feet MSL; and R–5802B, extending from the surface up to 13,000 feet MSL. The Kiowa MOA lies adjacent to the restricted areas and extends from 500 feet AGL up to 13,000 feet MSL. These airspace areas are also referred to as the Bollen Range.

Due to its small lateral and vertical dimensions, the Bollen Range cannot be used for High Altitude Dive Bomb training and other training events such as lights-out tactics and use of targeting laser systems.

The Proposal

The FAA is considering an amendment to 14 CFR part 73 to expand the size, and increase the time of designation, of the restricted airspace at the Bollen Range, Fort Indiantown Gap, PA. With this amendment, the existing lateral and vertical limits of Restricted Areas R–5802A and R–5802B would remain unchanged, but the time of designation for the two areas would be changed to read ''Daily, sunrise to 2200.''

A new restricted area, R–5802C, would be established consisting primarily of that airspace currently designated as the Kiowa MOA. The Kiowa MOA designation would be revoked. Restricted Area R–5802C would extend from 500 feet AGL up to 17,000 feet MSL.

Another new restricted area, R–5802D, would be designated from 17,000 feet MSL to but not including FL 220. Restricted Area R–5802D would overlie Restricted Areas R–5802A, B, and C.

Additionally, a new restricted area, R–5802E, would be designated extending from FL 220 to FL 250. Restricted Area R–5802E would be defined using the same northern and eastern boundaries as Restricted Area R–5802D, but the south and west boundaries of Restricted Area R–5802E would extend an additional 4 nautical miles beyond the corresponding boundaries of Restricted Area R–5802D.

This proposal would change the time of designation for all Bollen Range airspace from the current ''February 15 through May 10 and September 1 through December 15, 0800–2300 local time on Saturdays and 0800–1200 local time on Sundays; May 11 through August 31, 0800–2400 local time on Saturdays and 0800–2000 local time on all other days; other times by NOTAM issued at least 48 hours in advance,'' to ''Daily, sunrise to 2200.'' This change would increase the available hours that the Range could be scheduled for use. The restricted areas would be available for joint-use. This means that the restricted areas would be scheduled only when needed for training, and would be available for transit by non-participating aircraft when not in use.

This action also proposes to change the name of the using agency of the Bollen Range airspace from ''Commander, Fort Indiantown Gap, Annville, PA,'' to ''ANG, 193rd SOW, Det 1, Fort Indiantown Gap Military Reservation, PA.''

The Air National Guard has proposed these changes because the restricted airspace existing at Bollen Range is too small to permit essential aircrew training in the tactics used in recent real-world engagements. The current 13,000-foot MSL upper limit of the Range is not sufficient to satisfy high altitude weapons release training requirements. Also, the current lateral dimensions do not provide sufficient restricted airspace to contain required maneuvering, lights-out training, or the use of targeting laser systems.

Section 73.58 of 14 CFR part 73 was republished in FAA Order 7400.8K, dated September 26, 2002. The coordinates for this airspace action are based on North American Datum of 1983.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to the appropriate environmental analysis in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.58 [Amended]

2. § 73.58 is amended as follows:

* * * * *

R–5802A Fort Indiantown Gap, PA [Amended]

By removing the current ''Time of Designation'' and ''Using agency'' and substituting ''Time of Designation. Daily, sunrise to 2200'' and ''Using agency. ANG, 193rd SOW, Det 1, Fort Indiantown Gap Military Reservation, PA.''

R–5802B Fort Indiantown Gap, PA [Amended]

By removing the current ''Time of Designation'' and ''Using agency'' and substituting ''Time of Designation. Daily, sunrise to 2200.'' and ''Using agency. ANG, 193rd SOW, Det 1, Fort Indiantown Gap Military Reservation, PA.''

R–5802C Fort Indiantown Gap, PA [New]

Boundaries. Beginning at lat. 40°23′24″ N., long. 76°43′34″ W.; to lat. 40°25′06″ N., long. 76°44′47″ W.; to lat. 40°28′00″ N., long. 76°46′59″ W.; to lat. 40°29′42″ N., long. 76°42′59″ W.; to lat. 40°29′31″ N., long. 76°39′07″ W.; to lat. 40°28′31″ N., long. 76°36′21″ W.; to lat. 40°27′13″ N., long. 76°35′13″ W.; to lat. 40°26′18″ N., long. 76°36′40″ W.; thence to point of beginning.

Designated altitudes. 500 feet AGL to but not including 17,000 feet MSL.

Time of designation. Daily, sunrise to 2200.

Controlling agency. FAA, New York ARTCC.

Using agency. ANG, 193rd SOW, Det 1, Fort Indiantown Gap Military Reservation, PA.

R–5802D Fort Indiantown Gap, PA [New]

Boundaries. Beginning at lat. 40°23′24″ N., long. 76°43′34″ W.; to lat. 40°25′06″ N., long. 76°44′47″ W.; to lat. 40°28′00″ N., long. 76°46′59″ W.; to lat. 40°29′42″ N., long. 76°42′59″ W.; to lat. 40°29′31″ N., long. 76°39′07″ W.; to lat. 40°28′31″ N., long. 76°36′21″ W.; to lat. 40°27′13″ N., long. 76°35′13″ W.; to lat. 40°26′18″ N., long. 76°36′40″ W.; thence to point of beginning.

Designated altitudes. 17,000 feet MSL to but not including FL 220.

Time of designation. Daily, sunrise to 2200.

Controlling agency. FAA, New York ARTCC.

Using agency. ANG, 193rd SOW, Det 1, Fort Indiantown Gap Military Reservation, PA.

R–5802E Fort Indiantown Gap, PA [New]

Boundaries. Beginning at lat. 40°29′42″ N., long. 74°42′59″ W.; to lat. 40°29′31″ N., long. 76°39′07″ W.; to lat. 40°28′31″ N., long. 76°36′21″ W.; to lat. 40°27′13″ N., long. 76°35′13″ W.; to lat. 40°23′45″ N., long. 76°32′36″ W.; to lat. 40°22′50″ N., long. 76°34′03″ W.; to lat. 40°19′55″ N., long. 76°40′59″ W.; thence clockwise along the arc of a 4-nautical-mile radius circle centered at lat. 40°23′24″ N., long. 76°43′34″ W.; to lat. 40°21′48″ N., long. 76°48′18″ W.; to lat. 40°26′04″ N., long. 76°51′34″ W.; to lat. 40°28′00″ N., long. 76°46′59″ W.; thence to point of beginning.

Designated altitudes. FL 220 to FL 250.

Time of designation. Daily, sunrise to 2200.

Controlling agency. FAA, New York ARTCC.

Using agency. ANG, 193rd SOW, Det 1, Fort Indiantown Gap Military Reservation, PA.

Issued in Washington, DC, on August 8, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–20772 Filed 8–13–03; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[KY–200334(b); FRL–7542–5]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants; Commonwealth of Kentucky and Jefferson County, KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Commercial and Industrial Solid Waste Incineration (CISWI) units section 111(d) negative declarations submitted by the Commonwealth of Kentucky (state) and Jefferson County, Kentucky (local). These negative declarations certify that CISWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act do not exist in the Commonwealth of Kentucky and Jefferson County, Kentucky. In the Final Rules Section of this **Federal Register**, the EPA is approving the negative declarations submitted by the Commonwealth of Kentucky and Jefferson County, Kentucky, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 15, 2003.

ADDRESSES: Comments may be submitted by mail to: Joydeb Majumder, Air Toxics and Monitoring Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, Supplementary Information section (sections I.B.1. i. through iii.) which is published in the Rules Section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder, Air Toxics and Monitoring Branch, or Michele Notarianni, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Majumder can also be reached by telephone at (404) 562–9121 and via electronic mail at *majumder.joydeb@epa.gov.* Ms. Notarianni may be reached by telephone at (404) 562–9031 and via electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, *see* the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: July 23, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–20429 Filed 8–13–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI73

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period, Announcement of Public Hearing, and Availability of Draft Economic Analysis for Proposed Designation of Critical Habitat for Three Threatened Mussels and Eight Endangered Mussels in the Mobile River Basin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; reopening of comment period, announcement of hearing, and availability of draft economic analysis.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the

draft economic analysis for the proposed designation of critical habitat for three threatened mussels and eight endangered mussels in the Mobile River Basin. We also give notice of a public hearing. We are reopening the comment period for the proposal to designate critical habitat for these species to accommodate the public hearing and to allow all interested parties to comment on the proposed rule and associated draft economic analysis. Comments previously submitted need not be resubmitted and will be fully considered in the final determination of the proposal.

DATES: The public hearing will be held from 7 to 10 p.m. central standard time on October 1, 2003, in Birmingham, Alabama.

Maps of the critical habitat units and information on the species will be available for public review on October 1, 2003 from 5:30 to 6:30 p.m.

The comment period is hereby reopened until October 14, 2003. We must receive comments on the proposal and draft economic analysis from all interested parties by the closing date. Any comments that we receive after the closing date will not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at Brock Forum, located in Dwight Beeson Hall on the campus of Samford University, 800 Lakeshore Drive, Birmingham, Alabama. You can get copies of the proposed rule for the critical habitat designation, maps, and draft economic analysis by downloading them on the Internet at *http://southeast.fws.gov/hotissues*; or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213; or by calling Connie Light Dickard, Mississippi Field Office, telephone 601/321–1121.

Written comments and materials concerning the proposal may be submitted to us at the hearing, or directly by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213.

2. You may hand-deliver written comments and information to our Mississippi Field Office, at the above address, or fax your comments to 601/965–4340.

3. You may send comments by electronic mail (e-mail) to *paul_hartfield@fws.gov.* For directions on how to submit comments electronically, see the ''Public Comments Solicited'' section.

Comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield, Mississippi Field Office, at the above address (telephone 601/321–1125, facsimile 601/965–4340).

SUPPLEMENTARY INFORMATION:

Background

We listed the fine-lined pocketbook (*Lampsilis altilis*), orange-nacre mucket (*Lampsilis perovalis*), and Alabama moccasinshell (*Medionidus acutissimus*) as threatened species, and the Coosa moccasinshell (*Medionidus parvulus*), southern clubshell (*Pleurobema decisum*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), ovate clubshell (*Pleurobema perovatum*), triangular kidneyshell (*Ptychobranchus greeni*), upland combshell (*Epioblasma metastriata*), and southern acornshell (*Epioblasma othcaloogensis*) as endangered species on March 17, 1993 (58 FR 14330).

On March 26, 2003, we published in the **Federal Register** a proposal to designate critical habitat for these species (68 FR 14752). The proposed designation includes portions of the Tombigbee River drainage in Mississippi and Alabama; portions of the Black Warrior River drainage in Alabama; portions of the Alabama River drainage in Alabama; portions of the Cahaba River drainage in Alabama; portions of the Tallapoosa River drainage in Alabama and Georgia; and portions of the Coosa River drainage in Alabama, Georgia, and Tennessee. The proposed designation encompasses a total of approximately 1,760 kilometers (km) (1,093 miles (mi)) of river and stream channels.

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. We have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES** section). The results of our draft analysis suggest that the potential economic impacts of the proposed designation range from $9.03 million to $33.3 million over the next 10 years. Please refer to the draft analysis for more details concerning the methodological approach and findings of the analysis.

Public Hearing

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. Donald Waldon, Tennessee-Tombigbee Waterway Development Authority; Randall Chafin, The Birmingham Waterworks Board; Ralph Clemens, Alabama-Tombigbee Rivers Coalition; Jerry Sailors, Coosa-Alabama Improvement Association; and Sheldon Morgan, Warrior-Tombigbee Waterway Association, individually requested a public hearing within the allotted time period.

Public hearings are designed to gather relevant information that the public may have that we should consider in the proposed designation of critical habitat or a draft economic analysis.

We will hold a public hearing in Birmingham, Alabama, on October 1, 2003, from 7 to 10 p.m. Birmingham is centrally located relative to the proposed critical habitat units and the affected States. The hearing location will be the Brock Forum, located in Dwight Beeson Hall on the campus of Samford University, 800 Lakeshore Drive, Birmingham, Alabama. All comments presented at the public hearing will be recorded by a court reporter. Maps of the critical habitat units and information on the species will be available for public review one hour prior to the public hearing between 5:30 and 6:30 p.m.

Public Comments Solicited

We have reopened the comment period at this time in order to accept the best and most current scientific and commercial data available regarding the proposed critical habitat determination for the three threatened and eight endangered Mobile River Basin mussels and the draft economic analysis associated with the designation of critical habitat. All previous comments and information submitted during the comment period need not be resubmitted. Written comments may be submitted to the Field Supervisor (*see* **ADDRESSES** section).

Please submit electronic comments as an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: RIN 1018–AI73'' and your name and return address in your e-mail message. If you

do not receive a confirmation from the system that we have received your e-mail message, please contact us directly by calling our Mississippi Field Office (*see* **ADDRESSES** section).

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

We solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposal or the draft economic analysis. We particularly seek comments concerning:

(1) Are data available to develop more accurate estimates of the costs of project modifications related to the relicensing of Weiss Dam and operations at Carters Reregulation Dam;

(2) Are data available to discern the likelihood that the proposed water supply dams will be constructed within critical habitat; further, is information available regarding the costs of potential project modifications for construction of these dams;

(3) Are data available on additional land use practices, or current or planned activities in proposed critical habitat areas, that are not specifically or adequately addressed in this analysis; and

(4) Are data available detailing additional specific benefits of the species or habitat that may be incorporated qualitatively or quantitatively into the discussion of benefits?

Author

The primary author of this document is Paul Hartfield (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 5, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–20729 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AI63

2003–2004 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to add seven additional refuges to the list of areas open for hunting and/or sport fishing activities and increase the activities available at three other refuges for 2003–2004.

DATES: We must receive your comments on or before September 15, 2003.

ADDRESSES: Submit written comments to Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, VA 22203. See **SUPPLEMENTARY INFORMATION** for information on electronic submission. For information on specific refuges' public use programs and the conditions that apply to them or for copies of compatibility determinations for any refuge(s), contact individual programs at the addresses/phone numbers given in ''Available Information for Specific Refuges'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leslie A. Marler, (703) 358–2397; Fax (703) 358–2248.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 (Administration Act) closes national wildlife refuges to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), and consistent with the principles of sound fish and wildlife management and administration. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System (System or we) for the benefit of present and future generations of Americans.

We annually review refuge hunting and fishing programs to determine whether to include additional refuges.

Provisions governing hunting and fishing on national wildlife refuges are in Title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality recreational and educational experiences.

On many refuges where we decide to allow hunting and fishing, our general policy of adopting regulations identical to State hunting and fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the ''Statutory Authority'' section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to either migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or those species subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of areas open to hunting or fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and fishing in 50 CFR part 32.

Statutory Authority

The National Wildlife Refuge System Administration Act (Administration Act) of 1966 (16 U.S.C. 668dd–668ee, as amended) and the Refuge Recreation Act (Recreation Act) of 1962 (16 U.S.C. 460k–460k–4) govern the administration and public use of national wildlife refuges.

Amendments enacted by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) build upon the Administration Act in a manner that provides an ''Organic Act'' for the System similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the System as a national network of lands, waters, and

interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus the mission of the System on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the System, through which the American public can develop an appreciation for fish and wildlife. The Act established six wildlife-dependent recreational uses, when compatible, as the priority general public uses of the System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the mission of the System. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

New Hunting and Fishing Programs

In preparation for opening additional refuges to hunting and fishing, or to initiating new hunting or fishing programs on refuges already open, we document appropriate compliance with the National Environmental Policy Act (NEPA) through an Environmental Assessment with a finding of No Significant Impact, an Environmental Impact Statement with a Record of Decision, or determine and document that the action qualifies for a Categorical Exclusion. We also conduct and document internal consultations under section 7 of the Endangered Species Act, and coordinate with the State(s), and if appropriate, Tribe(s) in or near the refuge.

Upon review of these documents, we have determined that the opening of these National Wildlife Refuges to hunting and/or fishing is compatible with the purpose of the refuge and the mission of the system, and not inconsistent with applicable State laws. A copy of the compatibility determinations for each respective refuge is available upon request from the Regional Office noted under the heading ''Available Information for Specific Refuges.''

We propose to allow the following wildlife-dependent recreational activities:

Refuge	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Wapanocca	Arkansas	X		X	
Grand Cote	Louisiana	X	X	X	
Northern Tallgrass Prairie	Minnesota/Iowa	X	X	X	
Boyer Chute	Nebraska	X		X	
DeSoto	Iowa		X		
Big Branch Marsh	Louisiana		X		
North Platte	Nebraska		X	X	
Coldwater	Mississippi				X
Bandon Marsh	Oregon				X
Rappahannock River Valley	Virginia				X

Lands acquired as ''waterfowl production areas,'' which we generally manage as part of Wetland Management Districts, are open to the hunting of migratory game birds, upland game, big game, and sport fishing subject to the provisions of State law and regulations (see 50 CFR 32.1 and 32.4). This year we are adding Detroit Lakes Wetland Management District in Minnesota to the list of refuges open for all four of these activities.

We are correcting an administrative error in 50 CFR part 32 that occurred with regard to Bandon Marsh National Wildlife Refuge in Oregon. It has come to our attention that the CFR does not indicate that the refuge is open to sport fishing. We opened the refuge to sport fishing in 1986 (55 FR 30655, 30663; August 28, 1986). It appears that a clerical error was made when the rules adopted in 1986 were being published in the subsequent edition of the CFR. We are correcting that error and part 32 will now reflect that the refuge is open to sport fishing. Coldwater National Wildlife Refuge was part of Tallahatchie National Wildlife Refuge (both in Mississippi) and is an area of the System that we opened by reason of its having been included in Tallahatchie's fishing plan (61 FR 45364, August 29, 1996). It has become a separate unit this year, thus we are including a separate listing that Coldwater National Wildlife Refuge is open to fishing only.

If finalized as proposed, the 2003–2004 hunting and fishing season will result in a net of three national wildlife refuges added to fishing and four national wildlife refuges added to hunting. This will bring our cumulative total of national wildlife refuges open to hunting to 315 and refuges open to fishing to 274.

Request for Comments

You may comment on this proposed rule by any one of several methods:

1. You may mail comments to: Chief, Division of Conservation Planning and Policy, National Wildlife Refuge

System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, VA 22203.

2. You may comment via the Internet to: *refugesystempolicycomments@fws.gov.* Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include: ''Attn: 1018–AI63'' and your full name and return mailing address in your Internet message. If you only use your e-mail address, we will consider your comment to be anonymous and will not consider it in the final rule. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–2036.

3. You may fax comments to: Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, at (703) 358–2248.

4. Finally, you may hand-deliver or courier comments to the address mentioned above. In light of increased security measures, please call (703) 358–2036 before hand-delivering comments.

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

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. We considered providing a 60-day, rather than a 30-day, comment period. However, we determined that an additional 30-day delay in processing these refuge-specific hunting and fishing regulations would hinder the effective planning and administration of our hunting and fishing programs. That delay would jeopardize establishment of hunting and fishing programs this year, or shorten their duration. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time providing for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

When finalized, we will incorporate this regulation into 50 CFR part 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on national wildlife refuges.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand? Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to: *Execsec@ios.doi.gov.*

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Service asserts that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and full economic analysis is not required. The purpose of this rule is to add seven refuges to the list of refuges that have hunting and/or fishing activities and to increase the type of activities at three other refuges. The refuges are located in the States of Arkansas, Iowa, Louisiana, Minnesota, Mississippi, Nebraska, Oregon, and Virginia. Fishing and hunting are two of the wildlife-dependent uses of national wildlife refuges that Congress recognized as legitimate and appropriate and directed us to facilitate, subject to such restrictions or regulations as may be necessary to ensure their compatibility with the purpose(s) and mission of each refuge. Many of the 542 existing national wildlife refuges already have programs where we allow fishing and hunting. Not all refuges have the necessary resources and landscape that would make fishing and hunting opportunities available to the public. By opening these refuges to new activities, we have determined that we can make quality experiences available to the public. This rule establishes hunting and/or fishing programs at the following refuges: Wapanocca National Wildlife Refuge in Arkansas, Grand Cote National Wildlife Refuge in Louisiana, Northern Tallgrass Prairie National Wildlife Refuge in Minnesota and Iowa, Boyer Chute and North Platte National Wildlife Refuges in Nebraska, DeSoto National Wildlife Refuge in Iowa, Big Branch Marsh National Wildlife Refuge in Louisiana, Coldwater National Wildlife Refuge in Mississippi, Bandon Marsh National Wildlife Refuge in Oregon, and Rappahannock River Valley National Wildlife Refuge in Virginia. We present impacts in 2002 real dollars.

For this analysis, we do not expect changes to recreational visits at the Detroit Lakes Wetland Management District, Bandon Marsh National Wildlife Refuge, or Coldwater National Wildlife Refuge. All Wetland Management Districts are open to hunting and fishing activities until closed, and the proposed rulemaking reflects that Detroit Lakes Wetland Management District is open to hunting of migratory game birds, upland game, big game, and sport fishing. However, we do not expect any change in visitation rates at this management district because recreationists currently have the option to participate in these activities at Detroit Lakes. We expect no visitation changes at Bandon Marsh National Wildlife Refuge. The proposed rule corrects an administrative error, but does not change current activities at the refuge since the refuge has been open to fishing since 1986. Also, we expect no visitation changes at Coldwater National Wildlife Refuge. Coldwater was part of Tallahatchie National Wildlife Refuge (also in the State of Mississippi) and covered by its fishing plan. Therefore, we would expect any previous fishing activity in the Coldwater section of

Tallahatchie to continue without change.

Following a best-case scenario, if the refuges establishing new fishing and hunting programs were a pure addition to the current supply of such activities, it would mean a consumer surplus of approximately $200,000 annually and an estimated increase of 1,000 user days of hunting and 2,082 user days of fishing (Table 1). Consequently, this rule will have a small, measurable, beneficial economic impact on the U.S. economy.

TABLE 1.—ESTIMATED CHANGES IN CONSUMER SURPLUS FROM ADDITIONAL FISHING AND HUNTING OPPORTUNITIES IN 2003

Refuge	Current visitation days (FY02)	Additional fishing days	Additional hunting days	Additional fishing and hunting combined
Wapanocca	844		70	70
Grand Cote	2,500		1,000	1,000
Northern Tallgrass Prairie			300	300
Boyer Chute	3,147		175	175
DeSoto	14,967		25	25
Big Branch Marsh	5,975		500	500
North Platte			12	12
Bandon Marsh	100			0
Coldwater				0
Rappahannock River	45	1,000		1,000
Total Days per Year	27,578	1,000	2,082	3,082
Consumer Surplus per Day		$62.16	$66.02	
Change in Total Consumer Surplus		$62,160	$137,454	$199,614

Note: All estimates are stated in 2002 real dollars.

b. This proposed rule will not create inconsistencies with other agencies' actions. This action pertains solely to the management of the System. The fishing and hunting activities located on national wildlife refuges account for approximately 1 percent of the available supply in the United States. Any small, incremental change in the supply of fishing and hunting opportunities will not measurably impact any other agency's existing programs.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use of national wildlife refuges.

d. This proposed rule will not raise novel legal or policy issues. This proposed rule opens seven additional refuges for fishing and hunting activities and increases the activities available at three other refuges. This proposed rule continues the practice of allowing recreational public use of national wildlife refuges. Many refuges in the System currently have opportunities for the public to hunt and fish on refuge lands.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

This proposed rule does not increase the number of recreation types allowed in the System but establishes new or additional hunting and/or fishing programs on 10 refuges. As a result, opportunities for wildlife-dependent recreation on national wildlife refuges will increase. The changes in the amount of permitted use are likely to increase visitor activity on these national wildlife refuges.

For purposes of analysis, we will assume that any increase in refuge visitation is a pure addition to the supply of the available activity. This will result in a best-case scenario, and we expect to overstate the benefits to local businesses. The latest information on the distances traveled for fishing and hunting activities indicates that more than 80 percent of the participants travel less than 100 miles from home to engage in the activity. This indicates that participants will spend travel-related expenditures in their local economies. Since participation is scattered across the country, many small businesses benefit. The 2001 National Survey of Fishing, Hunting, and Wildlife Associated Recreation identifies expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the expected maximum additional participation on the System as a result of this proposed rule yields the following estimates (Table 2) compared to total business activity for these sectors.

TABLE 2.—ESTIMATION OF THE ADDITIONAL EXPENDITURES WITH AN INCREASE OF ACTIVITIES IN THREE REFUGES AND THE OPENING OF SEVEN REFUGES TO FISHING AND/OR HUNTING FOR 2003–2004

	U.S. total expenditures in 2001	Average expend. per day	Current refuge expenditures w/o duplication (FY2002)	Possible additional refuge expenditures
Anglers				
Total Days Spent	557 Mil		5.9 Mil	1,000
Total Expenditures	$36.2 Bil	$65	$386.3 Mil	$64,937

TABLE 2.—ESTIMATION OF THE ADDITIONAL EXPENDITURES WITH AN INCREASE OF ACTIVITIES IN THREE REFUGES AND THE OPENING OF SEVEN REFUGES TO FISHING AND/OR HUNTING FOR 2003–2004—Continued

	U.S. total expenditures in 2001	Average expend. per day	Current refuge expenditures w/o duplication (FY2002)	Possible additional refuge expenditures
Trip Related	$14.9 Bil	27	$158.9 Mil	$26,710
Food and Lodging	$6.0 Bil	11	$63.8 Mil	$10,718
Transportation	$3.6 Bil	6	$38.1 Mil	$6,407
Other	$5.3 Bil	10	$57.0 Mil	$9,585
Hunters				
Total Days Spent	228 Mil		2.0 Mil	2,082
Total Expenditures	$20.6 Bil	$92	$181.0 Mil	$190,878
Trip Related	$5.3 Bil	$23	$46.1 Mil	$48,642
Food and Lodging	$2.4 Bil	$11	$21.5 Mil	$22,689
Transportation	$1.8 Bil	$8	$15.7 Mil	$16,571
Other	$1.0 Bil	$5	$8.9 Mil	$9,383

Note: All estimates are in 2002 real dollars.

Using a national impact multiplier for hunting activities (2.73) derived from the report ''Economic Importance of Hunting in America'' and a national impact multiplier for sportfishing activities (2.79) from the report ''Sportfishing in America'' for the estimated increase in direct expenditures yields a total economic impact of approximately $257,000 (Southwick Associates, Inc., 2003).

A large percentage of the retail trade establishments in the majority of affected counties qualifies as small businesses. With the small increase in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities will have more than a small benefit from the increased recreationist spending near the affected refuges; none are likely to have any adverse impact.

TABLE 3.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2003

Refuge/County(ies)	Retail trade in 1997 (2002 dollars in millions)	Estimated maximum addition from new refuge	Addition as a % of total	Total number retail establish.	Establish. with <10 emp.
Wapannocca, Crittenden, AR	$24,260	6,440	0.00003	262	171
Grand Cote, Avoyelles, LA	238	92,000	.039	169	129
Northern Tallgrass Prairie, Rock, MN	96	27,600	.029	62	39
Boyer Chute, Washington, NE	262	16,100	.006	99	64
DeSoto:					
Washington, NE	262	1,150	.0004	99	64
Harrison, IA	187	1,150	.0006	101	76
Big Branch Marsh, St. Tammany, LA	1,694	46,000	.003	1068	713
North Platte, Scotts Bluff, NE	439	1,104	.0003	312	220
Rappahannock River, Northumberland, VA	5,492	65,000	.001	54	45

Many small businesses may benefit from some increased wildlife refuge visitation. We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any region or nationally.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The additional fishing and hunting opportunities at the 10 refuges would generate angler and hunter expenditures with an economic impact estimated at $257,000 per year (2002 dollars). Consequently, the maximum benefit of this rule for businesses, both small and large, would not be sufficient to make this a major rule. The impact would be scattered across the country and would most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This proposed rule will have only a slight effect on the costs of hunting and fishing opportunities for Americans. Under the assumption that any additional hunting and fishing opportunities would be quality opportunities, we would attract participants to the refuge. If the refuge were closer to the participants' residences, then a reduction in travel costs would occur and benefit the participants. The Service does not have

information to quantify this reduction in travel cost but assumes that, since most people travel less than 100 miles to hunt and fish, the reduced travel cost would be small for the additional days of hunting and fishing generated by this proposed rule. We do not expect this proposed rule to affect the supply or demand for fishing and hunting opportunities in the United States and therefore, it should not affect prices for fishing and hunting equipment and supplies, or the retailers that sell equipment.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Refuges that establish hunting and fishing programs may hire additional staff from the local community to assist with the programs, but this would not be a significant increase, because only seven refuges are adding new programs and only three refuges are increasing programs by this proposed rule.

Unfunded Mandates Reform Act

Since this rule applies to public use of federally owned and managed refuges, it does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This regulation will affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

Federalism (Executive Order 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. In preparing this proposed rule, we worked with State governments, and our programs are consistent to the State regulations to the degree practicable.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation will clarify established regulations and result in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule opens seven refuges to hunting and/or sport fishing programs and increases activities at three others, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations. This regulation is consistent with and not less restrictive than Tribal reservation rules.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Number is 1018–0102). See 50 CFR 25.23 for information concerning that approval. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Endangered Species Act Section 7 Consultation

We reviewed the changes in hunting and fishing regulations herein with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1544, as amended) (ESA). For the national wildlife refuges proposed to open for hunting and/or fishing we have determined that DeSoto National Wildlife Refuge, Wapanocca National Wildlife Refuge, Northern Tallgrass Prairie National Wildlife Refuge, and Grand Cote National Wildlife Refuge (for Louisiana black bear) will not likely adversely affect any endangered or threatened species or designated critical habitat, and Grand Cote National Wildlife Refuge (for bald eagle), North Platte National Wildlife Refuge, Big Branch Marsh National Wildlife Refuge, Rappahannock River Valley National Wildlife Refuge, and Boyer Chute National Wildlife Refuge will not affect any endangered or threatened species or designated critical habitat.

We also comply with Section 7 of the ESA when developing CCPs and step-down management plans for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We also make determinations when required by the ESA before the addition of a refuge to the lists of areas open to hunting or fishing as contained in 50 CFR 32.7.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) and 516 DM 6, Appendix 1. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

A categorical exclusion from NEPA documentation applies to this amendment of refuge-specific hunting and fishing regulations since it is technical and procedural in nature and we otherwise comply with NEPA at the specific refuge units.

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop specific management plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 FW 1, 3, and 4. We prepare CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans.

Available Information for Specific Refuges

Individual refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs and maps of their respective areas. You may also obtain information from the Regional Offices at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248–6804.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Minnesota 55111; Telephone (612) 713–5400.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone (404) 679–7154.

Region 5—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8302.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3354.

Primary Author

Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Arlington, Virginia 22203, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend Title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 32—[AMENDED]

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

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd-668ee, and 715i.

2. In § 32.7 ''What refuge units are open to hunting and/or fishing?'' by:

a. Alphabetically adding Detroit Lakes Wetland Management District in the State of Minnesota;

b. Alphabetically adding Northern Tallgrass Prairie National Wildlife Refuge in the States of Minnesota and Iowa.

d. Alphabetically adding Coldwater National Wildlife Refuge in the State of Mississippi;

3. In § 32.23 Arkansas by adding the text of paragraphs A. and C. of Wapanocca National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Wapanocca National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of snow geese on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge hunting permits. The permits are nontransferable and anyone on refuge land in possession of hunting equipment must sign and carry them at all times.

2. We provide annual season dates on the hunt brochure/permit.

3. You must sign in prior to the hunt and sign out after the hunt at the Hunter Information Station.

4. You must adhere to all public use special conditions and regulations on the annual hunt brochure/permit.

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A4 apply.

2. We prohibit hunting from or within 50 yards (45 m) of graveled roads and within 150 yards (135 m) of refuge buildings.

3. We allow archery/crossbow hunting for deer. We specify annual season dates and bag limits on the hunting permits.

4. Immediately record the deer zone 640 on the hunter's license and later on official check station records upon harvest of a deer.

5. You must sign in prior to the hunt and sign out after the hunt at the Hunter Information Station. You must check harvested deer at this location.

6. We prohibit dogs.

7. We allow only single-person portable tree stands. You may place tree stands on the refuge 2 days before the hunt but must remove them within 2 days after the hunt. You must permanently affix the owner's name and address on stands left on the refuge.

8. We prohibit possession of or marking trails with materials other than biodegradable paper/flagging or reflective tape/tacks.

9. We prohibit ATVs.

* * * * *

4. In § 32.34 Iowa by:

a. Adding the text of paragraph B. of DeSoto National Wildlife Refuge; and

b. Adding Northern Tallgrass Prairie National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

* * * * *

DeSoto National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of ring-necked pheasant and turkey on designated areas of the refuge in accordance with the States of Iowa and Nebraska regulations subject to the following condition: We require a refuge permit.

* * * * *

Northern Tallgrass Prairie National Wildlife Refuge

Refer to § 32.42 Minnesota for regulations.

* * * * *

5. In § 32.37 Louisiana by:

a. Adding the text of paragraph B. of Big Branch Marsh National Wildlife Refuge; and

b. Adding the text of paragraphs A., B., and C. of Grand Cote National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Big Branch Marsh National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, snipe, woodcock, quail, gallinule, rail, and

nutria subject to the following conditions:

1. We allow hunting during the open State season using only approved nontoxic shot size #4 or smaller.

2. You may use dogs for squirrel and rabbit after the close of the State gun deer season only.

3. You may use only recognized breeds of setter/retriever for hunting of snipe, woodcock, and quail.

4. You must possess and carry a valid refuge hunt permit.

5. We prohibit air-thrust boats, motorized pirogues, mud boats, and air-cooled propulsion engines on the refuge.

6. Youth hunters 15 years of age and under must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. One adult 21 years of age or older must supervise each youth hunter. For waterfowl and upland game hunts, one adult may supervise two youths.

7. You must unload and encase or dismantle firearms carried in vehicles or boats.

8. We open the refuge during daylight hours only.

9. We prohibit possession of buckshot, slugs, rifles, or rifle ammunition.

10. We prohibit hunting within 200 feet (60 m) of any road (including refuge roads), residence, or designated public facilities.

11. We prohibit possession of lead shot during all refuge hunts.

* * * * *

Grand Cote National Wildlife Refuge

A. Hunting of Migratory Birds. We allow hunting of ducks, geese, coots, mourning dove, and woodcock on designated areas of the refuge, as shown on refuge hunting brochure map, subject to the following conditions:

1. We require hunters 16 years of age and older to purchase and carry a signed $12.50 refuge hunt/fish/ATV permit.

2. We allow public access from 5 a.m. to 1 hour after legal sunset.

3. An adult 21 years of age or older must accompany (within sight of and in normal voice contact with) youth hunters 15 years of age and under. We require youth hunters to possess and carry proof of completion of an approved Hunter Safety Course. Each adult can supervise one youth hunter during deer hunts and not more that two youths during all other hunts.

4. We require hunters to enter and exit the refuge from designated parking lots only.

5. We require hunters to checkin/out at a designated check station.

6. We prohibit camping or parking overnight on the refuge.

7. We prohibit discharge of firearms except when hunting.

8. We prohibit marking of trails with nonbiodegradable flagging tape.

9. We allow use of ATVs on designated trails from the third Saturday in September to the last day of the State rabbit season. An ATV is an off-road vehicle with factory specifications not to exceed the following: weight-750 lbs. (337.5 kg), length-85 inches (212.5 cm), and width-48 inches (120 cm). We restrict ATV tires to those no larger than 25 x 12 with a maximum 1 inch (2.5 cm) lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

10. We prohibit horses or mules.

11. We prohibit saws, saw blades, and/or machetes while on the refuge.

12. We prohibit hunting within 100 feet (30 m) of any designated road, ATV or hiking trail, or refuge facility.

13. We prohibit transportation of loaded weapons on an ATV.

14. We prohibit blocking of gates or trails with vehicles or ATVs.

15. We prohibit ATVs on trails/roads not specifically designated by signs for ATV use.

16. We allow only nonmotorized boats.

17. You may take raccoon, feral hog, beaver, nutria, and coyote incidentally to migratory bird hunting, upland game hunting, and big game hunting with weapons legal for that hunt.

18. We allow waterfowl (ducks, geese, coots) hunting on Wednesdays and Saturdays until 12 a.m. (noon) only during the Statewide duck season.

19. We allow use of shotguns during designated hunts only.

20. We prohibit the construction or use of permanent blinds.

21. You must remove all decoys, portable blinds, and boats daily.

22. We have a youth waterfowl hunt in the Crawfish Pond Unit during the Statewide duck season. This will be a quota-type hunt, and hunters will apply on an index or post card with their name, address, phone number, and dates of the hunt for which they are applying. When the State sets the duck season, we will set the dates of the hunt.

23. We allow hunting of mourning doves incidentally by waterfowl hunters only on days open to waterfowl hunting.

24. We allow recognized retriever breeds for migratory game bird hunting.

25. We prohibit frogging.

B. Upland Game Hunting. We allow hunting of rabbit, raccoon, feral hog, beaver, nutria, and coyote on designated areas of the refuge, as shown on refuge hunting brochure map, subject to the following conditions:

1. Conditions A1 through A17 and A25 apply.

2. We allow rabbit hunting from December 1 until the end of the Statewide season.

3. We allow use of shotguns during designated hunts only.

4. We allow recognized breeds of rabbit dogs only after the close of the State deer rifle season.

5. You must use only beagles that do not exceed 15 inches (37.5 cm) at front shoulders for rabbit hunting.

6. We require you to collar all dogs with owner's name and phone number.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge as shown on refuge hunting brochure map subject to the following conditions:

1. Conditions A1 through A17 and A25 apply.

2. We allow archery-only deer hunting on the refuge from October 1 through October 31 in the Gremillion Unit, Island of the Owls Unit, and Concrete Bridge Unit.

3. You must have hunter's name, address, and phone number permanently attached to all deer stands. We allow only portable deer stands that hunters must take down daily.

4. We prohibit hunters to drive deer or use pursuit dogs.

5. We allow only archery equipment during designated seasons.

6. We require hunters to complete and possess and carry proof of completion of the International Bowhunters' Safety Course.

7. We prohibit use of dogs to trail wounded deer.

8. You may kill one deer of either sex per day during the deer season.

* * * * *

6. In § 32.42 Minnesota by:

a. Adding Detroit Lakes Wetland Management District; and

b. Adding Northern Tallgrass Prairie National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Detroit Lakes Wetland Management District

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds throughout the district in accordance with State regulations, except that we prohibit hunting on the Headquarters Waterfowl Production Area (WPA) in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County. The following conditions apply:

1. We prohibit the use of motorized boats.

2. You must remove boats, decoys, blinds, and blind materials brought onto WPAs following each day's hunt.

3. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times.

B. Upland Game Hunting. We allow upland game hunting in accordance with State regulations throughout the district, except that we allow no hunting on the Headquarters Waterfowl Production Area (WPA) in Becker county, the Hitterdal WPA in Clay county, and the McIntosh WPA in Polk county. The following condition applies: We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times.

C. Big Game Hunting. We allow big game hunting in accordance with State regulations throughout the district, except that we allow no hunting on the Headquarters Waterfowl Production Area (WPA) in Becker county, the Hitterdal WPA in Clay county, and the McIntosh WPA in Polk county. The following conditions apply:

1. We prohibit the construction or use of permanent blinds, platforms, or ladders.

2. You must remove all portable hunting stands from the area at the end of each day's hunt.

D. Sport Fishing. We allow fishing in accordance with State regulations throughout the district subject to the following condition: We prohibit the use of motorized boats.

* * * * *

Northern Tallgrass Prairie National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas in accordance with State regulations subject to the following conditions:

1. You must remove boats, decoys, portable or temporary blinds, materials brought onto the refuge, and other personal property at the end of each day's hunt.

2. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

3. We prohibit the use of motorized watercraft.

B. Upland Game Hunting. We allow hunting of upland game on designated areas in accordance with State regulations subject to the following conditions:

1. Hunters may possess only approved nontoxic shot while in the field.

2. We prohibit the use of dogs for hunting furbearers.

3. Hunters may take weasels, coyotes, gophers, crows, and all other species for which there is no closed season only during a State-designated open season for other upland game species.

C. Big Game Hunting. We allow hunting of big game in accordance with State regulations subject to the following conditions:

1. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

2. You must remove all temporary blinds, stands, and scaffolds at the end of each day's hunt.

3. We prohibit the use of motorized watercraft.

* * * * *

7. In § 32.43 Mississippi by adding Coldwater National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

* * * * *

Coldwater National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. All persons fishing who are 16 years of age and older must carry a State license on the refuge. You must have a signed refuge fishing permit in your possession when fishing on the refuge. You may obtain permits at North Mississippi Refuges Complex Headquarters, 2776 Sunset Drive, Grenada, Mississippi 38901, or at the Dahomey National Wildlife Refuge Office, Box 381, Highway 446, Boyle, Mississippi 38730, or by mail from the above addresses.

2. We close the refuge to fishing from October 1 through February 28.

3. We allow fishing in bar pits along the Corps of Engineers levee only.

4. We prohibit possession of any weapon while fishing on the refuge.

5. We prohibit possession or use of jugs, seines, nets, hand-grab baskets, slat traps/baskets, or any other similar devices and commercial fishing of any kind.

6. We allow trotlines, yo-yos, limb lines, crawfish traps, or any other similar devices for recreational use only, and you must tag or mark them with waterproof ink, legibly inscribed or legibly stamped on the tag with your full name and full residence address, including zip code. You must attend these devices a minimum of once daily. If you are not going to attend these devices, you must remove them from the refuge.

7. We prohibit snagging or attempting to snag fish.

8. We allow crawfishing.

9. We allow taking of frogs by Special Use Permit only.

* * * * *

8. In § 32.45 Nebraska by:

a. Adding the text of paragraph A. and by revising the text of paragraph C. of Boyer Chute National Wildlife Refuge; and

b. Adding the text of paragraphs B. and C. of North Platte National Wildlife Refuge to read as follows:

§ 32.46 Nebraska.

* * * * *

Boyer Chute National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, and coots on designated areas of the refuge subject to the following conditions:

1. You may hunt from 1½ hours before legal sunrise to 1 hour after legal sunset along the immediate shoreline and up to the high bank of the Missouri River. You must access the hunting area by land only within the public use area of the Island Unit and only with shotgun cased and unloaded.

2. You must remove all blinds and decoys at the conclusion of each day's hunt.

3. You must adhere to all applicable State hunting regulations.

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer subject to the following condition: We allow a mentored youth hunt on designated areas of the refuge subject to the guidelines set forth and administered by the State.

* * * * *

North Platte National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of squirrel, rabbit, pheasants, State-defined furbearers, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close the Lake Alice Unit to all public entry from October 15 through January 14.

2. Youth hunters must be 15 years of age or younger. A licensed hunter 19 years of age or older must accompany youth hunters. We prohibit adults accompanying youth hunters to hunt or carry firearms. The accompanying adult is responsible for ensuring that the hunter does not engage in conduct that would constitute a violation of refuge or State regulations.

3. We close the refuge to public use from legal sunset to legal sunrise.

However, youth hunters and their adult guides may enter the designated hunting area 1 hour prior to legal sunrise.

4. We only allow dogs engaged in pheasant-hunting activities on the refuge.

C. Big Game Hunting. We allow archery hunting of mule deer and white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close the Lake Alice Unit to all public entry from October 15 through January 14.

2. We close the refuge to public use from legal sunset to legal sunrise. However, archery deer hunters may enter the designated hunting area 1 hour prior to legal sunrise and remain until 1 hour after legal sunset.

* * * * *

9. In § 32.56 Oregon by adding the text of paragraph D. of Bandon Marsh National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Bandon Marsh National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow sport fishing in accordance with State regulations, on that portion of the refuge west of U.S. Highway 101.

* * * * *

10. In § 32.66 Virginia by adding the text of paragraph D. of Rappahannock River Valley National Wildlife Refuge to read as follows:

§ 32.66 Virginia.

* * * * *

Rappahannock River Valley National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow fishing on designated areas of Wilna Pond in Richmond County subject to the following conditions:

1. As we implement the new fishing program at Wilna Pond, we intend to be open on a daily basis, legal sunrise to legal sunset. If unexpected law enforcement issues arise, we may restrict hours of access for fishing.

2. From March 15 through June 30, we allow fishing from the Wilna Pond pier only (no boat or bank fishing).

3. During the period when we open the Wilna Tract for deer hunting, we will close it to all other uses, including fishing.

4. We prohibit fishing by any means other than by use of one or more attended poles with hook and line attached.

5. We prohibit the use of lead fishing tackle.

6. We require catch and release fishing only for largemouth bass. Anglers may take other finfish species in accordance with State regulations.

7. We prohibit the take of any reptile, amphibian, or invertebrate species for use as bait or for any other purpose.

8. We prohibit the use of live minnows as bait.

9. We prohibit use of boats propelled by gasoline motors, sail, or mechanically operated paddle wheel. We only permit car-top boats; and we prohibit trailers.

10. Prescheduled environmental education field trips will have priority over other uses, including sport fishing, on the Wilna Pond pier at all times.

* * * * *

Dated: August 5, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–20448 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 080403B]

RIN 0648–AM23

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 10

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

ACTION: Notice of availability of Amendment 10 to the fishery management plan (FMP) for the shrimp fishery of the Gulf of Mexico; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 10 to the FMP for the shrimp fishery of the Gulf of Mexico (Amendment 10) for review, approval, and implementation by NMFS. Amendment 10 would establish a requirement, with limited exceptions, for the use of bycatch reduction devices (BRDs) in each shrimp trawl used in the Gulf of Mexico exclusive economic zone (EEZ) east of 85°30′ West Longitude (the approximate location of Cape San Blas, Florida); establish a criterion whereby NMFS would certify BRDs for use in this area of the eastern Gulf of Mexico EEZ; and establish bycatch reporting requirements for the shrimp fishery of the Gulf of Mexico. Written comments on the proposed actions are requested from the public.

DATES: Written comments must be received on or before October 14, 2003.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–522–5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of Amendment 10, which includes an Environmental Assessment, a Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA) are available from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa Florida 33619–2266. phone: 813–228–2815; fax: 813–833–1844. A Supplemental RIR and IRFA are available from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Branstetter, 727–570–5305; fax 727–570–5583; e-mail: steve.branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA), requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment. The intended effect of Amendment 10 is to conserve stocks of those finfish species found in the bycatch, while sustaining the viability of the shrimp fishery with minimum economic and social impacts.

NMFS partially approved the Council's Generic SFA Amendment on November 17, 1999. NMFS recognized that BRD requirements, implemented through Amendment 9 to the FMP (63 FR 1813, April 14, 1998), adequately addressed bycatch reduction requirements for areas west of Cape San Blas, Florida (western Gulf of Mexico). However, NMFS determined that

bycatch was not reduced to the extent practicable for the entire Gulf of Mexico shrimp fishery because no additional bycatch reduction methods had been proposed for the areas east of Cape San Blas, Florida (eastern Gulf of Mexico). NMFS urged the Council to develop additional management actions to address bycatch in the shrimp fishery of the eastern Gulf of Mexico to be in compliance with National Standard 9. NMFS also did not approve that portion of the Council's Generic SFA Amendment regarding bycatch reporting methodologies, and urged the Council to develop standardized procedures that would comply with provisions of the Magnuson-Stevens Act.

Amendment 10, if implemented, would establish a requirement for shrimp vessels fishing in the EEZ in the eastern Gulf of Mexico (east of 85°30′ North Longitude) to use BRDs capable of reducing at least 30 percent of the total finfish catch by weight. This measure is intended to complete the Council's responsibilities to meet Magnuson-Stevens Act requirements to reduce bycatch in the Gulf of Mexico shrimp fishery to the extent practicable.

Additional alternatives considered but rejected by the Council included effort reductions and area and seasonal closures. The Council concluded that effort reduction is not a viable option until the Federal permit system, implemented through Amendment 11 (67 FR 51074, August 7, 2002), is operational and more detailed analyses can be conducted on the current size, distribution, and effort of the shrimp fishery of the Gulf of Mexico. The Council also concluded that limited area and season closures, which may shift effort instead of reducing it, would not provide the magnitude of bycatch reduction that would be achieved from the use of BRDs in all areas all year.

Amendment 10, if implemented, also would establish a method of reporting and estimating the bycatch in the shrimp fishery of the Gulf of Mexico by using data collected by an existing fishery independent survey, the Southeast Area Monitoring and Assessment Program (SEAMAP), combined with NMFS' best available estimates of shrimp fishing effort. The Council determined that this method would provide the most practicable solution to meet Magnuson-Stevens Act bycatch reporting requirements.

Additional alternatives considered but rejected by the Council included the expanded use of observers or establishment of a logbook reporting system. The Council determined that an observer program that would document only five percent of the fishing effort would be too expensive ($13–57 million) to implement, and still would require substantial extrapolations of bycatch for the remaining 95 percent of all shrimp fishing effort. The Council rejected a logbook alternative to record bycatch because it would require a substantial time commitment and burden on the part of vessel captains and crews, and because quality control in the logbook data would be difficult to maintain. Over 450 species have been identified in Gulf of Mexico shrimp trawls, which would require extensive training in species identification for vessel crews.

A proposed rule that would implement measures outlined in Amendment 10 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by October 14, 2003 will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: August 7, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–20681 Filed 8–13–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 157

Thursday, August 14, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. CN–03–005]

Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection Cotton Classification and Market News Service.

DATES: Comments received by October 14, 2003, will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Interested persons are invited to submit written comments concerning this proposal to John Stevens, Management Analyst, Cotton Program, Agricultural Marketing Service, USDA, STOP 0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to *cottoncomments@usda.gov.* All comments should reference the docket number and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at Cotton Program, AMS, USDA, Room 2641–S, 1400 Independence Ave., SW., Washington, DC 20250 during regular business hours. A copy of this notice may be found at *www.ams.usda.gov/cotton/rulemaking.htm.*

FOR FURTHER INFORMATION CONTACT: John Stevens, Management Analyst, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224, telephone (202) 720–3193, facsimile (202) 690–1718, or e-mail at *johnc.stevens@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cotton Classification and Market News Service.

OMB Number: 0581–0009.

Expiration Date of Approval: May 31, 2004.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The Cotton Classification and Market News Service program provides market information on Cotton prices, quality, stocks, demand and supply to growers, ginners, merchandisers, textile mills and the public for their use in making sound business decisions. The Cotton Statistics and Estimates Act, U.S.C. 471–476, authorizes and directs the Secretary of Agriculture to: (a) Collect and publish annually, statistics or estimates concerning the grades and staple lengths of stocks of cotton, known as the carryover, on hand on the 1st of August each year in warehouses and other establishments of every character in the continental U.S., and following such publication each year, to publish at intervals, in his/her discretion, his/her estimate of the grades and staple length of cotton of the current crop (7 U.S.C. 471); (b) Collect, authenticate, publish and distribute by radio, mail, or otherwise, timely information of the market supply, demand, location, and market prices of cotton (7 U.S.C. 473b). The Agricultural Marketing Act of 1946, 7 U.S.C. 1621–1627, authorizes and directs the Secretary of Agriculture to collect and disseminate marketing information, including adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products.

The information collection requirements in this request are essential to carry out the intent of the Acts and to provide the cotton industry the type of information they need to make sound business decisions. The information collected is the minimum required. Information is requested from growers, cooperatives, merchants, manufacturers, and other government agencies. This includes information on cotton, cottonseed and cotton linters.

The information collected is used only by authorized employees of the USDA, AMS. The Cotton Industry is the primary user of the compiled information and AMS and other government agencies are secondary users.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.11 hours per response.

Respondents: Cotton Merchandisers, Textile Mills, Ginners.

Estimated Number of Respondents: 956.

Estimated Number of Responses per Respondent: 6.94.

Estimated Number of Responses: 6,634

Estimated Total Annual Burden on Respondents: 740.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to John Stevens, Management Analyst, Cotton Programs, AMS, USDA 1400 Independence Avenue, SW., STOP 0224, Room 2641–S, Washington, DC 20250. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 8, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–20693 Filed 8–13–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. CN–03–004]

Request for an Extension and Revision to a Currently Approved Information Collection.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension and revision to the currently approved information collection Cotton Classing, Testing, and Standards.

DATES: Comments received by October 14, 2003, will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Interested persons are invited to submit written comments concerning this notice to John Stevens, Management Analyst, Cotton Program, Agricultural Marketing Service, USDA, STOP 0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to *cottoncomments@usda.gov*. All comments should reference the docket number and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at Cotton Program, AMS, USDA, Room 2641–S, 1400 Independence Ave., SW., Washington, DC 20250 during regular business hours. A copy of this notice may be found at *www.ams.usda.gov/cotton/rulemaking.htm.*

FOR FURTHER INFORMATION CONTACT: John Stevens, Management Analyst, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224, telephone (202) 720–3193, facsimile (202) 690–1718, or e-mail at *johnc.stevens@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cotton Classing, Testing, and Standards.

OMB Number: 0581–0008.

Expiration Date of Approval: May 31, 2004.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: Information solicited is used by the USDA to administer and supervise activities associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA Standards. The information requires personal data, such as name, type of business, address, and description of classification services requested. These programs are conducted under the United States Cotton Standards Act (7 U.S.C. 51b), the Cotton Statistics and Estimates Act of 1927 (U.S.C. 473c), and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622h).

The information collection requirements in this request are essential to carry out the intent of the Acts and to provide the cotton industry the type of information they need to make sound business decisions. The information collected is the minimum required. Information is requested from growers, cooperatives, merchants, manufacturers, and other government agencies.

The information collected is used only by authorized employees of the USDA, AMS. The Cotton Industry is the primary user of the compiled information and AMS and other government agencies are secondary users.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.08 hours per response.

Respondents: Cotton merchants, warehouses, and gins.

Estimated Number of Respondents: 394.

Estimated Number of Responses per Respondent: 3.54.

Estimated Number of Responses: 1,394.

Estimated Total Annual Burden on Respondents: 109.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to John Stevens, Management Analyst, Cotton Programs, AMS, USDA 1400 Independence Avenue, SW., STOP 0224, Room 2641–S, Washington, DC 20250. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 8, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–20694 Filed 8–13–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–022–2]

Availability of a Draft Pest Risk Analysis for the Importation of Hass Avocados from Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for a draft pest risk analysis prepared by the Animal and Plant Health Inspection Service relative to a proposed rule currently under consideration that would allow the importation of Hass avocados from Mexico into the entire United States and during all months of the year. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments on the draft pest risk analysis that we receive on or before September 15, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–022–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–022–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–022–1'' on the subject line.

You may read any comments that we receive on the draft pest risk analysis in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW.,

Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Ron A. Sequeira, Center for Plant Health Science and Technology, PPQ, APHIS, 1017 Main Campus Drive, Suite 2500, Raleigh, NC 27606–5202; (919) 513–2663.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2003, we published in the **Federal Register** (68 FR 35619, Docket No. 03–022–1) a notice advising the public that a draft pest risk analysis has been prepared by the Animal and Plant Health Inspection Service relative to a proposed rule currently under consideration that would allow the importation of Hass avocados from Mexico into the entire United States and during all months of the year. In that notice, we stated that we were making the draft pest risk analysis available to the public for review and comment.

Comments on the draft pest risk analysis were required to be received on or before August 15, 2003. We are extending the comment period until September 15, 2003. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 11th day of August 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–20732 Filed 8–13–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Iron Ecosystem Restoration Project, Okanogan-Wenatchee National Forests, Kittitas County, Washington State

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to reduce the risk of wildfire in the Iron Ecosystem planning area due to the buildup of both aerial and ground fuels. Approximately 12,000 acres will be analyzed with treatment expected on 3,000 to 3,500 acres within the Swauk Late Successional Reserve (LSR). Much of the area is in Condition Class III and IV fuels types, which are greater than three to four times the natural range of fire occurrence in the area. The possibility of catastrophic wildfire exists through ignitions caused both by natural sources and increased traffic on U.S. Route 97 and forest roads.

The Forest Service proposes to thin these stands from below to restore forest health and resistance to stand replacing wildfire, and to be better protect late successional refugia. Protection of refugia would be achieved by breaking up contiguous, heavy fuel loading across the Swauk landscape, focusing on dry sites and sites at risk above the point of historical fire starts. Techniques such as thinning from below (pre-commercial and commercial), mechanical treatments, under burning, piling, top yarding, mulching, and fuel wood sales are proposed as tools reduce heavy fuel loading. Re-introduction of prescribed fire after initial treatments are completed in also proposed. The planning area is located approximately 15 miles northeast of Cle Elum, Washington. The agency has given notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they car participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by September 30, 2003.

ADDRESSES: Send written comments to the Cle Elum Ranger District, Attn: Floyd Rogalski, Natural Resource Planner, 803 West Second Street, Cle Elum, Washington 98922.

FOR FURTHER INFORMATION CONTACT: Floyd Rogalski, Natural Resource Planner Cle-Elum Ranger District, 803 West Second Street, Cle Elum, Washington 98922, (509) 674–4411.

SUPPLEMENTARY INFORMATION: This environmental impact statement (EIS) will analyze an areas for possible treatments designed to improve forest health while providing forest structure for wildlife habitat, such as the Northern Spotted Owl, and protecting other resource values. Risk of Wildfire has increased in the planning area due to the buildup of both aerial and ground fuels, exclusion of fire, and past harvest activities. These past treatment have reduced the presence of health, vigorous growing trees, while increasing the risk of stand replacement fire within an LSR. The possibility of wildfire ignition exists with increased recreational use and vehicle traffic on U.S. Highway 97 and lateral roads.

Purpose and Need for Action. Past timber harvest treatments removed many of the early seral species, leaving more shade tolerant species such as grant and Douglas-fir. Root diseases are widespread within the planning area with grand fir being the most prone and currently showing high mortality as a result. Douglas-fir mistletoe is also widespread within this area, affecting the vigor of the stands and making them more susceptible to insect attacks. Past harvest treatments also removed a majority of the dominant overstory trees, changing stocking and distribution levels, thus increasing the probability of stand replacement fire.

The primary purpose of the Iron Ecosystem Restoration Project is to implement the National Fire Plan, (January 2002) and Healthy Forest Initiative (August 2002) in the planning area. Protection of values at risk within the Swauk LSR is ultimately of the highest importance. Values at risk in the planning area include habitat for threatened and endangered species, late-successional habitat, wildland urban interface, aquatic habitat values, water quality, science values, and long-term forest stability and forest health. A strategic landscape plan would be developed and implemented for silviculturally treating heavily stocked stands for long-term stability and growth of fire resistant overstory trees, for protection of the highest quality spotted owl habitat from stand replacement fire, and for protection of current and planned home sites on private land in the Wildland Urban interface.

Proposed Action. The proposed action is to treat stands within the project area to reduce potential fire spread in the event of an ignition and to improve forest health, while continuing to provide forest structure for wildlife habitat and other resources. The Forest Service would focus treatment on those stands with greater tree densities and higher fuel loadings, considering their location on the landscape in terms of aspect and slope, and the projected benefits of manipulation in these stands to enhance suppression efforts. There have been 95 units identified that involve stands that contain a variety of mixed conifer and dry-site pine forest.

These unit vary in size from 5 to 150 acres.

The proposed action includes burning natural meadow openings (~120 acres) to stop the encroachment by tree species, use of fire and/or mechanical treatments (~2500 acres) to restore open pine stands, thinning with fire and mechanical treatments (~3000 acres), commercial removal of small diameter trees in stands where thinning would reduce competition and benefit residual stand vigor and resistance to forest insects and disease, and mechanical piling and burning of slash (~2500 acres) in stands with high levels of existing hazardous fuel concentrations.

The existing road and trail system needed to implement vegetative treatments within the project area would also be evaluated. This evaluation would include the analysis of mitigation measures needed to meet resource objectives within the project area. Mitigation measures may include relocation, reconstruction, closure, obliteration and decommissioning of existing roads and trails. The actual miles of road and trails that would be affected by this project have not yet been determined; the current road density averages ~2 mi/sq mile in the planning area.

Possible Alternatives. Alternative consider at this time include following; No Action; Fuel Reduction Outside of Preferred Owl Habitat; Fuel Reduction Outside of Preferred habitat and Breeding Radii in Owl Habitat; and Fuel Reduction Outside of Preferred, Breeding, and Home Range Areas with Light Thinning.

Nature of Decision To Be Made. The decision to be made is whether vegetative treatment and road and trail system changes should be carried out within the Iron Ecosystem Restoration Project area and, if so, how, where, and to what extent across the landscape.

Scoping Process. The proposed project was first listed in the Wenatchee National Forest Schedule of Proposed Actions in 1997 as the Iron Thin Project. In January 2000 scoping letters were sent to the District NEPA mailing list, referring to this project as the Iron Thin Forest Health Project. The project has been listed continuously, under one of these names, in the Schedule of Proposed Actions for the Okanogan and Wenatchee National Forests since the Second Quarter 1997 edition. Information will continue to be distributed through periodic mailings. There are no public meetings scheduled at this time.

Issues. At this time, the preliminary issues identified include potential impacts on: Threatened and endangered species habitat; changes in vegetative condition and forest succession resulting from the proposed activities; treatment of fuels to modify fire behavior; cumulative effects on long term site productivity; management of the roads for future access and use within the project area; economic viability of the project; and potential impacts to visual quality along U.S. Highway 97. Other issues considered in analysis include: Potential impacts to cultural resources within the project area; noxious weed concerns; potential effects to hydrologic relationships and fish habitat conditions; potential effects on recreational access; use within the project area [including winter recreation]; and potential impacts to Survey and Manage species.

Comment Requested. Your comments are being sought to aid in the identification of additional issues that should be considered in the development of the EIS. Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, state, Tribal, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS.

Comments received in response to this notice and through scoping, 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; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied; the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

A draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and is to be available for public review by December 2003. 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**. The final EIS is scheduled to be completed June 2004.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that coulb be raised at the draft EIS statement stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS 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 adequacy of the draft EIS 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 provisions of the National Environmental lPolicy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations and policies considered in making a decision regarding the proposal. The Responsible Official is Forest Supervisor, Okanogan-Wenatchee National Forests. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The decision will be subject to review under Forest Service Appeal Regulation (36 CFR part 215).

Dated: August 1, 2003.

Alan Quan,

Deputy Forest Supervisor.

[FR Doc. 03–20703 Filed 8–13–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Public Meetings of the Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (NFAB) will hold a field-trip meeting to become informed about Black Hills Forest issues as they relate to Forest Service Chief Dale Bosworth's four priorities: Catastrophic fire; invasive species; loss of open space; and unregulated off-road vehicle management. The meeting is open, and members of the public may attend any part of the meeting but are advised that the agenda involves off-highway travel with numerous stops between Rapid City and Sturgis, SD. The day will include travel on roads requiring vehicles with high undercarriage clearance, and members of the public will need to provide their own transportation and food. Those planning to attend should call Gwen Ernst-Ulrich at (605) 673–9209 by the close of business on Monday, August 18, 2003.

DATES: Wednesday, August 20, 2003 from 8 a.m. to 5 p.m.

ADDRESSES: Meet in the Rapid City Civic Center west parking lot, 444 Mt. Rushmore Rd., Rapid City, SD.

FOR FURTHER INFORMATION CONTACT: Frank Carroll, Black Hills National Forest, 25041 North Highway 16, Custer, SD, 57730, (605) 673–9200.

Dated: August 8, 2003.

John C. Twiss,

Black Hills National Forest Supervisor.

[FR Doc. 03–20702 Filed 8–13–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on August 25, and September 8, 2003 at 6:30 p.m. in Libby, Montana for business meetings. The meetings are open to the public.

DATES: August 25, and September 8, 2003.

ADDRESSES: The meetings will be held at the Forest Supervisor's Office, 1101 US Highway 2 West, Libby.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include decisions on projects for funding in fiscal year 2004 and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: August 7, 2003.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 03–20700 Filed 8–13–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee (RAC)

AGENCY: Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet on August 27, 2003, in Redding, California. The purpose of the meeting will be to hear presentations from applicants proposing projects, review project proposals, and receive reports from working committees.

DATES: The meeting will be held on August 27, 2003, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at Redding Elementary School District Office, 5885 East Bonnyview Rd., corner of E. and S. Bonnyview streets accessed by Interstate-5.

FOR FURTHER INFORMATION CONTACT: Rebecca Franco, coordinator, USDA Forest Service, (530) 242–2322. e-mail: *rfranco@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Discussion is limited to Forest Service staff and committee members. However, time will be provided for public input, giving individuals the opportunity to address the committee.

Dated: August 6, 2003.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 03–20701 Filed 8–13–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corporation; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to a request from Georgia Transmission Corporation for financing assistance from RUS to finance the construction of a 230 kV transmission line in Heard, Douglas, and Carroll Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at *bquigel@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: Georgia Transmission Corporation proposes to construct a 230 kV transmission line between its existing 230/115 kV Yellowdirt Switching Station located within the boundary of Plant Wansley in Heard County, Georgia, to the 230/115 kV Hickory Level Substation located approximately 1 mile south of Interstate 20 and 1.4 miles west of State Route 61 and is east of South Van Wert Road in Carroll County, Georgia. The length of the proposed transmission line is approximately 31 miles. The majority of the transmission line will parallel the existing 500 kV Plant Wansley to Villa Rica Transmission Line. The transmission line conductors will be supported by single concrete poles with an above ground height from 66 to 112 feet. The span between poles will vary from 300 to 1050 feet.

Copies of the Finding of No Significant Impact are available from RUS at the address provided herein or from Ms. Gayle Houston of Georgia Transmission Corporation, 2100 East Exchange Place, Tucker, Georgia 30085–2088 telephone (770) 270–7748. Ms. Houston's e-mail address is *gayle.houston@gatrans.com.*

Dated: August 8, 2003.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 03–20761 Filed 8–13–03; 8:45 am]

BILLING CODE 3410–15–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice of availability of final guidelines.

SUMMARY: The Chemical Safety and Hazard Investigation Board (CSB) announces that its final Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the agency have been posted on the CSB Web site, *http://www.csb.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher W. Warner, (202) 261–7600.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information it disseminates. Agency guidelines must be based on government-wide guidelines issued by the Office of Management and Budget (OMB). In accordance with this statutory requirement and OMB instructions, the CSB has posted its final Information Quality Guidelines on the agency Web site (*http://www.csb.gov*) and is publishing this notice of availability. The CSB previously posted interim Information Quality Guidelines on its website and published a notice of their availability and request for comments in the **Federal Register** (68 FR 19968, April 23, 2003). No comments were received and the final Information Quality Guidelines are unchanged from the interim version.

The Guidelines describe the CSB's procedures for ensuring the quality of information that it disseminates and the procedures by which an affected person or entity may obtain correction of information disseminated by the CSB that does not comply with the Guidelines.

(Authority: Sec. 515, Pub. L. 106–554; 114 Stat. 2763).

Dated: August 8, 2003.

Raymond C. Porfiri,

Deputy General Counsel.

[FR Doc. 03–20704 Filed 8–13–03; 8:45 am]

BILLING CODE 6350–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Final Results of the Sixth Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On April 9, 2003, the Department of Commerce published in the **Federal Register** its preliminary results of the sixth administrative review of the countervailing duty order on certain pasta from Italy for the period January 1 through December 31, 2001.

Based on information received since the preliminary results and our analysis of the comments received, the Department has revised the net subsidy rate for F.lli De Cecco di Fillipo Fara S. Martino S.p.A. Therefore, the final results differ from the preliminary results. The final net subsidy rates for the reviewed companies are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: August 14, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Cho or John Brinkmann, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3798 or 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department of Commerce (''the Department'') published in the **Federal Register** (61 FR 38544) the countervailing duty order on certain pasta from Italy.

In accordance with 19 CFR 351.213(b), this review of the order covers the following producers or exporters of the subject merchandise for which a review was specifically requested: F.lli De Cecco di Fillipo Fara S. Martino S.p.A. (''De Cecco'') and Italian American Pasta Company, S.r.L. (''IAPC'').

Based on withdrawal of the request for review, we rescinded this administrative review for Labor S.r.L., F. Divella, S.p.A., and Delverde, S.p.A. (*See Certain Pasta from Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review,* 68 FR 17346 (April 9, 2003) (''*Preliminary Results*'').

Since the publication of the *Preliminary Results,* a case brief was submitted on May 8, 2003, by De Cecco. The Department did not conduct a hearing in this review because none was requested.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, Bioagricoop Scrl, QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the countervailing duty order. (*See* August 25, 1997, memorandum from Edward Easton to Richard Moreland, which is on file in the

Central Records Unit (''CRU'') in Room B–099 of the main Commerce building.)

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the countervailing duty order. (*See* July 30, 1998, letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., which is on file in the CRU.)

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the countervailing duty order. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the countervailing duty order. (*See* May 24, 1999, memorandum from John Brinkmann to Richard Moreland, which is on file in the CRU.)

Period of Review

The period of review (''POR'') for which we are measuring subsidies is from January 1 through December 31, 2001.

Analysis of Comments Received

All issues raised in the case brief by the interested party to this administrative review are addressed in the August 7, 2003, *Issues and Decision Memorandum* (''*Decision Memorandum*'') from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum.* Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the CRU, Room B–099 of the Department. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading ''Italy.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on information received subsequent to the *Preliminary Results* and our analysis of the comment submitted in the case brief, we have made changes in our calculation of the net subsidies for De Cecco. These changes are discussed in the relevant section of the *Decision Memorandum.*

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1 through December 31, 2001, we determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below.

Company	*Ad valorem* rate (percent)
F.lli De Cecco di Filippo Fara San Martino, S.p.A.	2.01
Italian American Pasta Company, S.r.L.	0.00

We will instruct the U.S. Bureau of Customs and Border Protection (''BCBP'') to assess countervailing duties as indicated above. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of these final results of review. The Department will also instruct the BCBP to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice prices on all shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

The cash deposit rates for all companies not covered by this review are not changed by the results of this review. Thus, we will instruct BCBP to continue to collect cash deposits for non-reviewed companies, except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.L. (which were excluded from the order during the investigation), at the most recent rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of the companies assigned these rates is completed. In addition, for the period January 1 through December 31, 2001, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.301. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1)).

Dated: August 7, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I—Issues Discussed in the Decision Memorandum

I. Subsidies Valuation Methodology
  1. Benchmarks for Long-term Loans and Discount Rates
  2. Allocation Period
  3. Attribution
II. Analysis of Programs
  A. Programs Previously Determined to Confer Subsidies
  1. Law 64/86 Industrial Development Grants
  2. Law 488/92 Industrial Development Grants
  3. Industrial Development Loans Under Law 64/86
  4. Law 341/95 Interest Contributions on Debt Consolidation Loans
  5. Social Security Reductions and Exemptions—Sgravi
  6. IRAP Exemptions
  7. Export Restitution Payments
  B. Programs Determined to Be Not Used
  1. Law 64/86 VAT Reductions
  2. Export Credits under Law 227/77
  3. Capital Grants under Law 675/77
  4. Retraining Grants under Law 675/77
  5. Interest Contributions on Bank Loans under Law 675/77
  6. Interest Grants Financed by IRI Bonds
  7. Preferential Financing for Export Promotion under Law 394/81
  8. Urban Redevelopment under Law 181
  9. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (''PRISMA'')
  10. Law 183/76 Industrial Development Grants
  11. Law 598/94 Interest Subsidies
  12. Law 236/93 Training Grants
  13. European Regional Development Fund (''ERDF'')
  14. Duty-Free Import Rights
  15. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77
  16. Law 1329/65 Interest Contributions (''Sabatini Law'')
  17. European Social Fund (''ESF'')
  18. Corporate Income Tax (IRPEG) Exemptions

19. Export Marketing Grants under Law 304/90

III. *Analysis of Comments*

Comment: Clerical Error (De Cecco)

[FR Doc. 03–20782 Filed 8–13–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080803A]

Proposed Information Collection; Comment Request; Social, Cultural, and Economic Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 14, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia Pinto da Silva, 508–495–2370, or *patricia.pinto.da.silva@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

In order to address National Environmental Policy Act (NEPA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA)requirements, NOAA Fisheries social scientists need to collect a broad range of social, cultural and economic information currently unavailable. NOAA Fisheries social scientists conduct and support scientifically rigorous research as well as apply research findings to fishery management needs. This research is designed to improve social science data related to the human dimensions of fisheries management by:

1. Investigating social, cultural and economic issues/processes related to marine fishery stakeholders including, but not limited to, commercial and recreational fishermen, subsistence fishermen, fishing vessel owners, fishermen's families, fish processors and processing workers, and related fishery support businesses, and fishing communities as defined in MSA § 3(16);

2. Improving the current knowledge of baseline information related to marine fishery stakeholders, as described in (1) above;

3. Monitoring and measuring trends among marine fishery stakeholders, as described in (1) above, affected by fishery management decisions.

II. Method of Collection

Qualitative and quantitative research methods will be used to collect social, cultural and economic data. Examples of qualitative methods that will be employed are ethnographic research, focus groups, informal and formal structured and unstructured interviews, and participant observation. Examples of quantitative methods that will be used include paper and phone surveys and questionnaires.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and State, Local, or Tribal Government.

Estimated Number of Respondents: 6,000.

Estimated Time Per Response: 60 minutes (the response times for specific surveys will vary from 5 minutes to multiple hours).

Estimated Total Annual Burden Hours: 7,000.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 6, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–20682 Filed 8–13–03; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Emergency Review

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, (PRA 95) (44 U.S.C. Chapter 35). The Corporation requested that OMB review and approve its emergency request by August 15, 2003, for a period of six months. A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Corporation for National and Community Service, Office of Public Affairs, Ms. Rhonda Taylor, (202) 606–5000, Ext. 282, or by e-mail at *RTaylor@cns.gov.*

Unfortunately, since the Corporation requested OMB's approval of this emergency request by August 15, 2003, there will be not enough time for the public to provide comments through this **Federal Register** notice before the approval date. Therefore, there will be no public comment period regarding this notice. However, if OMB approves the emergency request for six (6) months, the Corporation will be asking for the public's comment during that time period.

Type of Review: Emergency request.

Agency: Corporation for National and Community Service.

Title: President's Volunteer Service Award Applications/Order Form.

OMB Number: None.

Agency Number: None.

Affected Public: Citizens of the United States.

Total Respondents: 200,000.

Frequency: On occasion.

Average Time Per Response: 20 minutes.

Estimated Total Burden Hours: 100,000 hours.

Total Burden Cost (capital/startup): 1,654,000.

Total Burden Cost (operating/maintenance): None.

Description: The President's Council on Service and Civic Participation was created by Executive Order on January 30, 2003. The Council is administered by the Corporation for National and Community Service. Under the Executive Order the Council is directed to (among other things) design and recommend programs to recognize individuals, schools, and organizations that excel in their efforts to support volunteer service and civic participation, especially with respect to students in primary schools, secondary schools, and institutions of higher learning. The Council will bestow the President's Volunteer Service Award to meet this requirement. In order to recognize individuals, schools and organizations, the program must collect information about the individuals and organizations and their activities to verify that they have earned the award.

The information collected will be used by the Program primarily to select winners of the President's Volunteer Service Awards and the Call to Service Awards (4000 hours or more.) Individuals or organizations can be nominated by an organization or third party, or as an exception, self nominate. The nominations will be reviewed by the administering agency for compliance and awards will be made on that basis. Information also will be used to assure the integrity of the Program (so that, for example, an individual or organization does not receive an award twice for the same project), for reporting on the accomplishments of the Program, for the public awareness campaign (such as press releases and website information on winning projects), and to further the purposes of the Executive Order (such as fostering partnerships and coordination of projects and to promote civic engagement).

Therefore, the Corporation has requested OMB's emergency review and approval by August 15, 2003.

Dated: August 8, 2003.

Barbara Taylor,

Director, Office of Public Affairs.

[FR Doc. 03–20742 Filed 8–13–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115]

Federal Acquisition Regulation; Information Collection; Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0115).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning notification of ownership changes. This OMB clearance expires on November 30, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 14, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Loeb, Policy Advisor, Office of Acquisition Policy, GSA, (202) 501–0650.

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–19, Notification of Ownership Changes.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 1.25.
Total Burden Hours: 125.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0115, Notification of Ownership Changes, in all correspondence.

Dated: August 5, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–20686 Filed 8–13–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0096]

Federal Acquisition Regulation; Submission for OMB Review; Patents

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0096).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning patents. A request for public comments was published in the **Federal Register** at 68 FR 35633 on June 16, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on

valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 15, 2003.

ADDRESSES: Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), Room 4035 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Craig Goral, Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

The patent coverage in FAR subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract above a dollar value of $25,000 (sections 27.202–1 and 52.227–2). The contractor is also required to report all royalties anticipated or paid in excess of $250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (sections 27.204–1, 52.227–6, and 52.227–9). The information collected is to protect the rights of the patent holder and the interest of the Government.

B. Annual Reporting Burden

Number of Respondents: 30.
Responses Per Respondent: 1.
Total Responses: 30.
Average Burden Hours Per Response: .5.
Total Burden Hours: 15.
Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0096, Patents, in all correspondence.

Dated: August 7, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–20792 Filed 8–13–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–87–000, et al.]

Hardee Power Partners, Limited, et al.; Electric Rate and Corporate Filings

August 5, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Hardee Power Partners, Limited

[Docket No. EG03–87–000]

Take notice that on July 31, 2003, Hardee Power Partners, Limited (Hardee Power) filed an application with the Federal Energy Regulatory Commission (Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations, on and as of the time at which a proposed transaction that will result in a change in Hardee Power's upstream owners closes (Transaction Closing Time).

Hardee Power states that as of the Transaction Closing Time, Hardee Power, a Florida limited partnership, will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities located in Florida. Hardee Power further states that the eligible facilities will consist of an approximate 370 MW natural gas /No. 2 oil fired electric generation plant and related interconnection facilities and that the output of the eligible facilities will be sold at wholesale.

Comment Date: August 26, 2003.

2. American Ref-Fuel Company of Delaware Valley, L.P.

[Docket No. ER00–2677–002]

Take notice that on July 31, 2003, American Re-Fuel Company of Delaware Valley, L.P., (ARC Delaware Valley) tendered for filing its triennial market power update pursuant to an unpublished Order issued by the Commission in Docket No. ER00–2677–000 on July 14, 2000, granting ARC Delaware market-based rate authorization.

Comment Date: August 21, 2003.

3. NorthWestern Energy, a Division of NorthWestern Corporation

[Docket No. ER03–329–002]

Take notice that on July 30, 2003, as supplemented on July 31, 2003, NorthWestern Energy (NWE), a division of NorthWestern Corporation tendered for filing, an amendment to its July 15, 2003, compliance filing in Docket No. ER03–329–001 filed pursuant to the Commission's Order issued February 13, 2003, in Docket No. ER03–329–000.

Comment Date: August 21, 2003.

4. PJM Interconnection, L.L.C.

[Docket No. ER03–807–001]

Take notice that on July 28, 2003, PJM Interconnection, L.L.C. (PJM) submitted for filing amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM in compliance with Commission Order issued June 27, 2003, in Docket No. ER03–807–000.

Comment Date: August 18, 2003.

5. NRG Energy Center Paxton, Inc.

[Docket No. ER03–933–001]

Take notice that on July 24, 2003, NRG Energy Center Paxton, Inc., (Paxton) filed an amendment to its June 6, 2003, filing under section 205 of the Federal Power Act, part 35 of the regulations of the Federal Energy Regulatory Commission (Commission), and Commission Order No. 614, requesting that the Commission (1) accept for filing a revised market-based rate tariff and (2) grant any waivers necessary to make the revised tariff sheets effective on June 30, 2003. Paxton's states that the proposed tariff revisions merely seek to properly update the name of the entity, as well as designate, update and conform the tariff to a format like those that the Commission has approved for Paxton's affiliates.

Comment Date: August 21, 2003.

6. FPL Energy Wyoming, LLC

[Docket No. ER03–1025–001]

Take notice that on July 31, 2003, FPL Energy Wyoming, LLC tendered for filing an amendment to its application, originally submitted on July 2, 2003, for authorization to sell energy and capacity at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: August 21, 2003.

7. California Independent System Operator Corporation

[Docket No. ER03–1090–001]

Take notice that on July 31, 2003, the California Independent System Operator Corporation (ISO) filed an amendment to the Participating Generator Agreement (PGA) between the ISO and Energia Azteca X, S. de R.L. de C.V. (EAX) originally submitted on July 18, 2003. The ISO states that it neglected to include the cover sheet required by Order No. 614 in its July 18, 2003, filing and is resubmitting the PGA, including the required cover sheet.

ISO states that no substantive change is being made and the terms remain the same as filed on July 18, 2003.

Comment Date: August 21, 2003.

8. Roswell Energy, Inc.

[Docket No. ER03–1137–000]

Take notice that on July 31, 2003, Roswell Energy, Inc. (Roswell) filed with the Commission a Notice of Cancellation of Rate Schedule FERC No. 1. Roswell requests that they be released from any and all report filing requirements. Roswell states that it is not, and has never been, in the business of generating and transmitting electric power.

Comment Date: August 21, 2003.

9. Idaho Power Company

[Docket No. ER03–1138–000]

Take notice that on July 31, 2003, Idaho Power Company filed a Notice of Cancellation of FERC Electric Tariff First Revised Volume No. 5, Service Agreement No. 147.

Comment Date: August 21, 2003.

10. Vermont Yankee Nuclear Power Corporation

[Docket No. ER03–1139–000]

Take notice that on July 31, 2003, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) submitted for filing an application to reduce Vermont Yankee's wholesale electric rates. Vermont Yankee states that the application affects only a single aspect of Vermont Yankee's rates—the accrual for post-retirement benefits other than pensions for Vermont Yankee's employees.

Vermont Yankee states that copies of this filing have been served on Vermont Yankee's wholesale customers and regulators in the states of Connecticut, Massachusetts, Maine, New Hampshire, and Vermont.

Comment Date: August 21, 2003.

11. Entergy Services, Inc.

[Docket No. ER03–1140–000]

Take notice that on July 31, 2003, Entergy Services, Inc., (Entergy) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing revisions to the creditworthiness provision (section 11) and other related provisions of Entergy's Open Access Transmission Tariff. Entergy Operating Companies states that the proposed revisions provide specific creditworthiness requirements and procedures for customers to better protect Entergy from risk of non-payment.

Comment Date: August 21, 2003.

12. New England Power Pool and ISO New England Inc.

[Docket No. ER03–1141–000]

Take notice that on July 31, 2003, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc., submitted for filing changes to the New England Power Pool Agreement, including the NEPOOL Open Access Transmission Tariff (the 100th Agreement). NEPOOL states that the 100th Agreement is designed to implement a comprehensive transmission cost allocation method for New England.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: August 21, 2003.

13. PJM Interconnection, L.L.C.

[Docket No. ER03–1142–000]

Take notice that on July 31, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing a construction service agreement (CSA) among PJM, Pleasants Energy, L.L.C. and Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company dba Allegheny Power.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 17, 2003, effective date for the CSA. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: August 21, 2003.

14. PJM Interconnection, L.L.c.

[Docket No. ER03–1143–000]

Take notice that on July 31, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) and a construction service agreement (CSA) among PJM and Meyersdale Windpower, L.L.C. and Pennsylvania Electric Company a FirstEnergy Company.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 17, 2003 effective date for the ISA and CSA. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 21, 2003.

15. PJM Interconnection, L.L.C.

[Docket No. ER03–1144–000]

Take notice that on July 31, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, PSEG Fossil LLC and Public Service Electric and Gas Company and a notice of cancellation of an interim ISA that has terminated.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 2, 2003, effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 21, 2003.

16. NorthWestern Corporation

[Docket No. ES03–44–000]

Take notice that on July 29, 2003, NorthWestern Corporation (NorthWestern) submitted an application pursuant to section 204 of the Federal Power Act seeking: (1) Authorization to issue no more than $775 million of indebtedness; (2) authorization to issue up to 200 million additional shares of common stock and 50 million shares of preferred stock; and (3) an extension of the authority granted in Docket No. ES02–39–000.

NorthWestern also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: August 18, 2003.

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, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20687 Filed 8–13–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0076, FRL–7544–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Listing of Advisories, EPA ICR Number 1959.02, OMB Control Number 2040–0026

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 14, 2003.

ADDRESSES: Submit your comments, referencing Docket ID No. OW–2003–0076, to EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket MC4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, attention: Information Collection Request for the National Listing of Advisories.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Bigler, National Program Manager, National Fish and Wildlife Contamination Program (4305T), Office of Science and Technology, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0389; fax number: (202) 566–0409; e-mail address: *bigler.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA has established a public docket for this ICR under Docket ID number OW–2003–0076, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. The EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are Administrators of Public Health and Environmental Quality Programs in State and tribal governments (NAICS 92312/SIC 9431 and NAICS 92411/SIC 9511).

Title: National Listing of Advisories.

Abstract: The National Listing of Fish and Wildlife Advisories (NLFWA) Database contains information on the number of new advisories issued by each state, territory, or tribe annually. The advisory information collected identifies the waterbody under advisory, the fish or shellfish species and size ranges included in the advisory, the chemical contaminants and residue levels causing the advisory to be issued, the waterbody type (river, lake, estuary, coastal waters), and the target populations to whom the advisory is directed. This information is collected under the authority of section 104 of the Clean Water Act, which provides for the collection of information to be used to protect human health and the environment. The results of the survey are shared with states, territories, tribes, other federal agencies, and the general public through the NLFWA database and the distribution of annual fish advisories fact sheets. The responses to the survey are voluntary and the information requested is part of the state public record associated with the advisories. No confidential business information is requested. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR. The EPA would like to are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Burden Statement: The annual public reporting burden for the collection of information (averaged over the first three years of the information collection request) is 3,566 labor hours per year. This includes one response per year from 92 respondents with an average of 38.76 hours per response. The total annualized cost to the respondents is estimated at $529.00. No capital or startup costs are required. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or

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

Dated: August 8, 2003.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 03–20779 Filed 8–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0064, FRL–7544–6]

Agency Information Collection Activity: Proposed Collection; Comment Request; Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program, EPA ICR 1287.06, OMB Control Number 2040–0101

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 14, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0064, to EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Water Docket, MC 4101–T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Maria E. Campbell, Municipal Assistance Branch, MC 4204–M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0628; fax number: 202–501–2396; e-mail address: *campbell.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0064, which is available for public viewing at the Office of Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statue. 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 EDOCKET. The entire printed comment, including copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are public wastewater treatment plants, municipalities, industries, universities, manufacturing sites and States.

Title: Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program.

Abstract: This ICR requests re-approval to collect data from EPA's National Clean Water Act Recognition Awards nominees. The awards are for the following program categories: Operations and Maintenance (O&M) Excellence, Biosolids (Biosolids) Management Excellence, Combined Sewer Overflow Control (CSO) Program Excellence and Storm Water (SW) Management Excellence.

Note: Information collection approval for the Pretreatment Awards Program is included in the National Pretreatment Program ICR (OMB No. 2040.0009, EPA ICR No. 0002.09), approved through September 30, 2003. The National Clean Water Act Recognition Awards Program is managed by EPA's Office of Wastewater Management (OWM). The Awards Program is authorized under Section 501(e) of the Clean Water Act, as amended. The Awards Program is intended to provide recognition to municipalities and industries which have demonstrated outstanding technological achievements, innovative processes, devices or other outstanding methods in their waste treatment and pollution abatement programs. Approximately 50 awards are presented annually. The achievements of these award winners are summarized in reports, news articles, national publications, and **Federal Register** Notice.

Submission of information on behalf of the respondents is voluntary. No confidential information is requested. The Agency only collects information from award nominees under a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. Based on the data collection, national panels will evaluate the nominees' efforts and recommend finalists. The collections will be used by the respective awards programs to evaluate and determine which abatement achievements should be recognized. A regulation in the **Federal Register** on February 8, 2002, (67 FR 6138, February 8, 2002) establishes a framework for the annual Clean Water Act Recognition Awards.

As currently structured, the O&M awards category has nine sub-categories which recognize municipal achievements. The biosolids awards category has four sub-categories which recognize municipal biosolids operations, technology and research

achievements, and public acceptance; the CSO awards category has one sub-category which recognizes municipal programs; and the SW awards category has two sub-categories which recognize municipal and industrial programs. All nominees are screened for environmental compliance by the States and EPA. Municipalities and institutions desiring to be considered for National awards voluntarily complete the questionnaires and provide design and operating information about their facility or programs. The award nominations are reviewed by State/Regional officials prior to forwarding them for National award consideration. At the National level, award reviews involve Federal officials and review panels comprised of representatives of EPA, State water pollution control agencies and affiliated associations.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Burden Statement: The information is collected from approximately 200 respondents at a total cost of $89,600 per year and 2800 burden hours, including $52,200 and 1600 burden hours for the respondents' time, and $37,400 and 1200 burden hours for the States' review time. 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 information.

Dated: August 6, 2003.

Jane S. Moore,

Acting Director, Office of Wastewater Management.

[FR Doc. 03–20781 Filed 8–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7544–4]

National Advisory Council for Environmental Policy and Technology (NACEPT) Superfund Subcommittee Meeting; Notification of Public Advisory NACEPT Subcommittee on Superfund; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Superfund Subcommittee, a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), will meet on the dates and times described below. The meeting is open to the public. Seating will be on a first-come basis and limited time will be provided for public comment on each day.

DATES: The meeting will be held from 1 p.m. to 7 p.m. on September 3, 2003; from 8 a.m. to 7 p.m. on September 4, 2003; and 8 a.m. to 12:30 p.m. on September 5, 2003.

ADDRESSES: The meeting will take place at the Wyndham City Center Hotel, 1143 New Hampshire Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Angelo Carasea, Designated Federal Officer for the NACEPT Superfund Subcommittee, Office of Superfund Remediation and Technology Innovation, Office of Solid Waste and Emergency Response, MC 5204G, 1200 Pennsylvania Ave., NW., Washington, DC, (703) 603–8828.

SUPPLEMENTARY INFORMATION:

Agenda

This sixth meeting of the NACEPT Superfund Subcommittee will involve discussion of the latest version of the Subcommittee's draft report. The agenda for the meeting will be available one week prior to the meeting's occurrence.

Public Attendance

The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public sessions are encouraged to contact the Designated Federal Official. Each day will have one public comment period.

Angelo Carasea,

Designated Federal Officer, NACEPT Superfund Subcommittee.

[FR Doc. 03–20780 Filed 8–13–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 1, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 15, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act

submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.*: 3060–0725.

Title: Quarterly Filing of Nondiscrimination Reports (on Quality of Service, Installation and Maintenance) by Bell Operating Companies (BOCs).

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4 respondents; 16 responses.

Estimated Time Per Response: 50 hours.

Frequency of Response: Quarterly reporting requirement.

Total Annual Burden: 800 hours.

Total Annual Cost: N/A.

Needs and Uses: Bell Operating Companies (BOCs) are required to provide nondiscrimination reports on a quarterly basis. Without provision of these reports, the Commission would be unable to ascertain whether the BOCs were discriminating in favor of their own payphones. The report allows the Commission to determine how the BOCs will provide competing payphone providers with equal access to all the basic underlying network services that are provided to its own payphones.

This collection is being submitted as a revision to correct an administrative error that indicated in previous submissions to OMB that this was an annual reporting requirement when it is actually a quarterly reporting requirement. The burden has been adjusted due to less respondents filing quarterly reports.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–20871 Filed 8–13–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 1, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 14, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.*: 3060–0719.

Title: Quarterly Report of IntraLATA Carriers Listing Payphone Automatic Number Identifications (ANIs).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 400 respondents; 1,600 responses.

Estimated Time Per Response: 3.5 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirements, and quarterly reporting requirements.

Total Annual Burden: 5,600 hours.

Total Annual Cost: N/A.

Needs and Uses: IntraLATA carriers must submit a quarterly list of payphone ANIs to the interexchange carriers. This will facilitate resolution of disputed ANIs in the par-call compensation context. The report allows IXCs to determine which dial-around calls are made from payphones. The data which must be maintained for at least 18 months after the close of a compensation period will facilitate verification of disputed ANIs.

OMB Control No.: 3060–0743.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 6,345.

Estimated Time Per Response: 29 hours (average).

Frequency of Response: Recordkeeping requirement, third party disclosure requirements, and on occasion, quarterly, annual, and other reporting requirements.

Total Annual Burden: 152,801 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission promulgated rules and requirements implementing Section 276 of the Telecommunications Act of 1996. Among other things, the rules: (1) Established fair compensation for every completed intrastate and interstate payphone cell; (2) discontinued intrastate and interstate access charge payphone service elements and payments, and intrastate and interstate payphone subsidies from basic exchange services; and (3) adopted guidelines for use by the states in establishing public interest payphones to be located where there would otherwise not be a payphone. The Commission is making minor editorial changes to this information collection.

OMB Control No.: 3060–0856.

Title: Universal Service—Schools and Libraries Universal Service Program Reimbursement Forms.

Form No.: FCC Forms 472, 473, and 474.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 61,800.

Estimated Time Per Response: 1–2 hours.

Frequency of Response: On occasion and annual reporting requirements, and third party disclosure requirements.

Total Annual Burden: 88,050 hours.

Total Annual Cost: N/A.

Needs and Uses: The Telecommunications Act of 1996 contemplates that discounts on eligible services shall be provided to schools and libraries, and that service providers shall seek reimbursement for the amount of the discounts. FCC Forms 473 and 474 facilitate the reimbursement process. FCC Form 472 allows providers to confirm that they are actually providing the discounted services to eligible entities. FCC Forms 472, 473 and 474 and their instructions are being revised to make editorial changes, dates adjusted and clarification statements added. These forms instructions have also had invoice deadlines and extension request sections added for the filing requirements.

OMB Control No.: 3060–0952.

Title: Proposed Demographic Information and Notifications, Second FNPRM, CC Docket No. 98–147, and Fifth NPRM, CC Docket No. 96–98.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,400.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirements and third party disclosure requirements.

Total Annual Burden: 5,600 hours.

Total Annual Cost: N/A.

Needs and Uses: The proposed requirements implemented section 706 of the Communications Act of 1934, as amended, to promote deployment of advanced services without significantly degrading the performance of other services. In CC Docket No. 98–147, the Commission solicited comment on whether the requesting carriers should receive demographic and other information from ILECs to determine whether they wish to co-locate at particular remote terminals. In CC Docket No. 96–98 comments were sought on whether ILECs should provide certain notifications to competing carriers. This information collection has not changed and the Commission is seeking OMB to obtain the normal three year clearance.

OMB Control No.: 3060–1039.

Title: Nationwide Programmatic Agreement Regarding Section 106 National Historic Preservation Act—Review Process, WT Docket No. 03–128.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and State, local, or Tribal government.

Number of Respondents: 12,000 respondents; 7,800 responses.

Estimated Time Per Response: 1–3 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirements, and on occasion reporting requirements.

Total Annual Burden: 73,800 hours.

Total Annual Cost: $10,017,000.

Needs and Uses: This information is used by FCC staff, State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and the Advisory Council of Historic Preservation (ACHP) to take such action as may be necessary to ascertain whether a proposed action may affect historic properties that are listed or eligible for listing in the National Register as directed by Section 106 of the NHPA and the Commission's rules. The Commission sought and received emergency OMB approval for this information collection on 7/17/03. This information collection expires on 12/31/03. The Commission is seeking OMB approval to extend (no change) this collection for the normal three year OMB clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–20872 Filed 8–13–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 28, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 15, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: OMB Control Number: 3060–XXXX.

Title: Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 4.

Estimated Time per Response: 10 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 40 hours.

Total Annual Costs: N/A.

Needs and Uses: On March 14, 2003, the FCC released an Order on Reconsideration (''Order''), *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, FCC 03–46. In this Order, the Commission will require IP Relay providers to submit a report to the FCC annually detailing the technical developments that have occurred to enable IP Relay providers to meet the TRS mandatory minimum standards waived in the Order.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–20873 Filed 8–13–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, August 12, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution and corporate activities.

In calling the meeting, the Board determined, on motion of Director John D. Hawke, Jr. (Comptroller of the Currency), seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), concurred in by Vice Chairman John M. Reich and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: August 12, 2003.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 03–20944 Filed 8–12–03; 3:33 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 28, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. First Sleepy Eye Bancorporation, Inc., Sioux Falls, South Dakota; to acquire First State Agency, Storden, Minnesota, and thereby engage in general insurance agency activities in a town with a population of less than 5,000, pursuant to Section 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, August 8, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.03–20731 Filed 8–13–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Tuesday, August 19, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 12, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–20903 Filed 8–12–03; 1:47 pm]

BILLING CODE 6210–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10 a.m. (EDT); correction, August 18, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice; correction.

SUMMARY: The Federal Retirement Thrift Investment Board published a notice in the **Federal Register** on Monday, August 11, 2003, concerning upcoming Board member meeting.

Correction

In the **Federal Register** of Monday, August 11, 2003, Vol. 68, No. 154, page 47566, first column, change the time caption to read:

10 a.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: August 11, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–20864 Filed 8–12–03; 11:40 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03190]

Monitoring, Evaluation, and Prevention of HIV/AIDS in the Cooperative Republic of Guyana; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program for monitoring, evaluation, and information systems improvement to implement integrated care and prevention of HIV/AIDS in the Cooperative Republic of Guyana. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Ministry of Health (MOH) of Guyana. The MOH is the only appropriate and qualified organization to conduct a specific set of activities supportive of the CDC Global AIDS Program's technical assistance to Guyana for the following reasons: (1) The MOH is uniquely positioned, in terms of legal authority, ability, and credibility among Guyanese citizens, to collect crucial data on HIV/AIDS as well as to provide care to HIV infected patients; (2) The MOH is mandated by Guyanese laws to implement care and treatment activities necessary for the control of epidemics, including HIV/AIDS; (3) The MOH already has an established network of health care facilities throughout the country. These treatment facilities include treatment centers, maternal-child health clinics, and infectious disease centers which take care of a significant number of HIV/AIDS patients. These facilities are accessible and provide health information and care for patients with HIV/AIDS, enabling the Ministry to become immediately engaged in the activities listed in this announcement; and (4) The MOH has trained physicians, nurses, and social workers already working in their network of health care facilities around the country who can carry out the activities listed in this announcement. On April 4, 2003, the United States Department of Health and Human Services signed a memorandum of understanding with the Guyanese Ministry of Health to collaborate on program implementation related to HIV/AIDS, including operations research.

C. Funding

Approximately $200,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimate may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact:

Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Okechukwu C. Nwanyanwu, Ph.D., Director, Global AIDS Program, Guyana, Centers for Disease Control and Prevention, Department of Health and Human Services, c/o U.S. Embassy, 100 Young and Duke Streets, Georgetown, Guyana, South America, Telephone: (592) 223–6501 or (592) 223–6503, Fax: (592) 225–8497, e-mail: *ocn1@cdc.gov.*

Dated: August 8, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–20706 Filed 8–13–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03150]

Expansion of Youth and Young Adult-Focused HIV & STD Prevention Activities In the Republic of Tanzania; Notice of Availability of Funds

Application Deadline: September 15, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 307 of the Public Health Service Act, (42 U.S.C. 241(a) and 242l) as amended. The Catalog of Federal Domestic Assistance number is 93.941.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for the expansion of youth-focused HIV/STD prevention activities in the Republic of Tanzania.

The purpose of this program is to provide assistance to a Tanzania-based public, private non-profit, or faith-based organization in the provision of a youth-focused HIV/STD prevention program that includes information, education and communication (IEC), voluntary counseling and testing (VCT), and support services for HIV positive youth in Tanzania; and in the development of strategies for extending successful youth-focused services to other private and public sector organizations.

Information on HIV prevention methods (or strategies) can include abstinence, monogamy, *i.e.*, being faithful to a single sexual partner, or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use).

Measurable outcomes of this program will be in alignment with one or more of the following performance goals for the National Center for HIV, STD and TB Prevention (NCHSTP), Global AIDS Program (GAP): Working with other countries, U.S. Agency for International Development (USAID), and U.S. government agencies, reduce the number of new HIV infections among 15–24 year olds in sub-Saharan Africa from an estimated two million by 2005.

C. Eligible Applicants

Applications may be submitted by public and private non-profit organizations, and faith-based organizations based in Tanzania, with current capacity for providing IEC, VCT, and support services to 25,000 youth per year. Organizations based outside Tanzania are not eligible to apply.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $250,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about September 15, 2003 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

(1) Funds may be used only for activities associated with HIV/AIDS. CDC funds may be used for direct costs such as salaries; necessary travel; operating costs, including supplies, fuel, utilities, etc.; staff training costs, including registration fees and purchase and rental of training related equipment; and purchase of HIV testing reagents, test kits, and laboratory equipment for HIV testing.

(2) The purchase of antiretroviral drugs, reagents, and laboratory equipment for antiretroviral treatment projects requires prior approval in writing by CDC officials.

(3) No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic use of any illegal drug.

(4) Applicants may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention and care services for which funds are requested).

(5) The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of American University, Beirut, the Gorghas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

(6) All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

(7) A fiscal Recipient Capability assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

(8) You must obtain an annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Priority

Priority will be given to eligible applicants who can demonstrate:

(1) A history of working with youth and organizations of young adults on HIV/STD prevention.

(2) The capacity to coordinate multi-agency projects.

(3) A well-organized program for training their own staff.

(4) The capability of training other sites to develop and implement successful HIV/STD prevention programs.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Develop and implement IEC strategies targeting youth ages 15–24 and young adults attending tertiary institutions. Use existing IEC materials and/or develop new materials in collaboration with Ministry of Education (MOE), Ministry of Health (MOH), and CDC. Information on HIV prevention methods (or strategies) should include abstinence, monogamy, *i.e.*, being faithful to a single sexual partner, or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use).

b. Provide technical assistance and training to institutions working with youth to strengthen their capacity to implement successful IEC strategies.

c. Work within existing health services to extend or initiate VCT and services for the treatment and prevention of sexually transmitted diseases (STD) services specifically targeting youth.

d. Provide technical assistance and training to existing health facilities to strengthen their capacity to routinely provide youth-focused VCT and STD services.

e. Work within existing health or community services to extend or initiate support services for HIV positive youth.

f. Provide technical assistance and training to existing health or community organizations to strengthen their capacity to routinely provide support services for HIV positive youth.

2. CDC Activities

a. Collaborate with the grantee on designing and implementing the activities listed above, including, but not limited to:

(1) Providing technical guidance to process of developing IEC materials and effective communication strategies;

(2) Developing and implement youth-targeted IEC training module;

(3) Developing HIV testing quality assurance plan for tertiary institutions;

(4) Developing a referral logistics plan and integrate a care and treatment referral strategy into VCT/STI prevention services;

(5) Developing support strategies linking community organizations with youth prevention activities of tertiary institutions;

(6) Providing overall guidance and technical support to project data management and analysis, dissemination of results and findings, and management and tracking of finances; and

(7) Participating on project-related advisory board.

b. Provide input into, and approve the selection of key personnel to be involved in the activities performed under this cooperative agreement.

c. Assist in training and capacity building to ensure successful implementation of program and activities.

d. Monitor project and budget performance.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation, and Budget. The program plan should address activities to be conducted over the entire five-year project period. The budget must cover the first one-year budget period. Prepare an appropriate plan for financial management and accounting for the activities in this proposal that are consistent with an annual workplan.

G. Submission and Deadline

Application Forms

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order: Cover Letter, Table of Contents, Application, Budget Information Form, Budget Justification, Checklist, Assurances, Certifications, Disclosure Form, HIV Assurance Form, Indirect Cost Rate Agreement, and Narrative.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. eastern time September 15, 2003. Submit the application to: Technical Information Management—PA# 03150, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may be e-mailed to *PGOTIM@cdc.gov.* If you e-mail your application, you must follow up by mailing a copy of the application face page showing original signatures.

Deadline

Applications shall be considered as meeting the deadline if they are received in the CDC Procurement and Grants Office before 4 p.m. eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal as stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Ability to Carry Out the Project (40 points).

The extent to which the applicant understands and describes activities which are realistic, achievable, time-framed and appropriate to effectively plan, coordinate, and complete these activities. Applicant must show how and at what intervals the effectiveness and productivity of this program activity will be monitored and evaluated. Applicant should include a description of applicant organizational structure and use it to explain how the work will be carried out.

2. Technical and Programmatic Approach (20 points)

The extent to which the applicant's proposal demonstrates understanding of the technical and organizational aspects of conducting all included HIV testing and care activities and computerization of client record data.

3. Personnel (20 points)

The adequacy of personnel, including training, availability, and experience, in order to carry out the technical and organizational aspects of all proposed activities.

4. Administrative and Accounting Plan (20 points)

(a) The adequacy of the plans to account for, prepare reports, monitor, and audit expenditures under this agreement; (b) The extent to which the application demonstrates ability to administer and manage the budget; (c) The extent to which the budget is itemized and well justified; and (d) Demonstration of plans to engage an outside accounting firm to design and manage the financial system to meet CDC and the recipient's accounting requirements.

5. Budget (Reviewed, but not scored)

The extent to which the budget is detailed, clear, justified, provides direct support, and is consistent with the proposed program activities.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original, plus two copies of:

1. Interim progress reports. Include copies of all surveillance reports and plans completed and program accomplishments during the reporting period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives;

b. Current Budget Period Financial Progress;

c. New budget Period Program Proposed Activity Objectives;

d. Detailed Line-Item Budget and Justification; and

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

AR–4, HIV/AIDS Confidentiality Provisions

AR–5, HIV Program Review Panel Requirements

AR–9, Paperwork Reduction Act Requirements

AR–10, Smoke-Free Workplace Requirements

AR–12, Lobbying Restrictions.

Executive Order 12372 does not apply to this program.

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *www.cdc.gov.*

Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Terri Brown, International Territories Acquisitions and Assistance Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920

Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2638, E-mail address: *aie9@cdc.gov.*

For program technical assistance, contact: Eddas Bennett, MBA, MPH, Deputy Director, CDC Tanzania AIDS Program, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 140 Msese Road, Dar es Salaam, Tanzania, Telephone: 2 666 010 x4155, e-mail: *ebennett@tancdc.co.tz.*

Dated: August 8, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–20705 Filed 8–13–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002N–0516]

Agency Information Collection Activities; Announcement of OMB Approval; Request for Samples and Protocols

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''A Request for Samples and Protocols'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 2003 (68 FR 27820), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0206. The approval expires on July 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: August 7, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20684 Filed 8–13–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 17, 2003, from 8:30 a.m. to 5 p.m. and on September 18, 2003, from 8:30 a.m. to 3 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Hilda Scharen, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: *SCHARENH@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 17, 2003, the subcommittee will discuss quality by design and how it is distinct from approaches that attempt to test in quality. On September 18, 2003, the subcommittee will discuss and define principles by which risk management is integrated into decisionmaking.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by September 10, 2003. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m. on September 18, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 10, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Hilda Scharen at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 7, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–20683 Filed 8–13–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: September 11–12, 2003.

Open: September 11, 2003, 8:30 a.m. to 12 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by staff of the Institute and discussions concerning Institute programs and policies.

Place: National Institutes of Health, 6130 Executive Blvd., Conference Room G, Rockville, MD 20852.

Closed: September 11, 2003, 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Conference Room G, Rockville, MD 20852.

Open: September 12, 2003, 8:30 a.m. to 12 p.m.

Agenda: Peer Review Issues.

Place: National Institutes of Health, 6130 Executive Blvd., Conference Room G, Rockville, MD 20852.

Contact Person: Lore Anne McNicol, Director, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892, 301–496–9110.

Information is also available on the Institute's/Center's Home Page: *www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20735 Filed 8–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Eye Institute, July 14, 2003, 8 a.m to July 15, 2003, 12 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD, 20892, which was published in the **Federal Register** on May 29, 2003, 03 13360.

The Board of Scientific Counselors meeting date has been changed to September 29, 2003. The meeting is closed to the public.

Dated: August 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20738 Filed 8–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Sequencing Technology 2.

Date: August 15, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 454 Corp, 20 Commercial Street, Branford, CT.

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20736 Filed 8–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Drug Abuse Special Emphasis Panel, Program Project.

Date: August 20, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neurosciences Building, 6001 Executive Blvd., Room 3158, MSC 9547, Bethesda, MD 20814–9692, (Telephone Conference Call).

Contact Person: Rita Liu, Ph.D., Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1388.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20737 Filed 8–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Perceptual Processing.

Date: September 25, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20739 Filed 8–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate clinical research projects with yearly direct costs greater than $1 million for their relevance to the mission and the goals of NINDS. The outcome of the evaluation will be a decision whether NINDS should accept the application for scientific review. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Subcommittee of the National Advisory Neurological Disorders and Stroke Council.

Date: August 21, 2003.

Time: 1:30 p.m. to 4 p.m.

Agenda: To evaluate the rationale of large proposed clinical research projects.

Place: 6001 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dr. Constance W. Atwell, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, 6001 Executive Boulevard, Suite 3309, MSC 9531, Bethesda, MD 20892–9531, 301–496–9248.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20740 Filed 8–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available, Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: September 11–12, 2003.

Time: September 11, 2003, 10:30 a.m. to recess.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: September 12, 2003, 8:30 a.m. to adjournment.

Agenda: Presentation of NIMH Director's report and discussion of NIMH program and policy issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, 31C, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-

in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home Page: *www.nimh.nih.gov/council/advis.cfm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20741 Filed 8–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Low Effect Habitat Conservation Plan for George Shimboff, Solano County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Mr. George Shimboff (Applicant) has applied to the U.S. Fish and Wildlife Service (we, Service) for a 1-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of the threatened valley elderberry longhorn beetle (*Desmoncerus californicus dimorphus*) associated with construction of a swimming pool and perimeter fence, removal of an interior fence, and landscaping within the remaining area of a 0.16-acre partially developed parcel located on Christine Drive, Vacaville, Solano County, California. A conservation program to minimize and mitigate for the project activities would be implemented as described in the proposed Shimboff Low Effect Habitat Conservation Plan (proposed Plan), which would be implemented by the Applicant.

We are requesting comments on the permit application and on the preliminary determination that the proposed Plan qualifies as a ''Low-effect'' Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the Environmental Action Statement (EAS), which is also available for public review.

DATES: Written comments should be received on or before September 15, 2003.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may be sent by facsimile to (916) 414–6711.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Valoppi, Conservation Planning Branch, Sacramento Fish and Wildlife Office (*see* **ADDRESSES**); telephone: (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application, proposed Plan, and EAS should immediately contact the Service by telephone at (916) 414–6600 or by letter to the Sacramento Fish and Wildlife Office. Copies of the proposed Plan and EAS also are available for public inspection during regular business hours at the Sacramento Fish and Wildlife Office (*see* **ADDRESSES**).

Background

Section 9 of the Act and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32

The Applicant is seeking a permit for take of the valley elderberry longhorn beetle during the life of the permit. This species is referred to as the ''covered species'' in the proposed Plan.

The project encompasses construction of a swimming pool and new perimeter fence, removal of an existing interior fence, and landscaping of the remaining area within the 0.16-acre project site. The resident elderberry shrub would be removed to accommodate the new swimming pool, fencing, and landscaping. The project site contains habitat (*e.g.*, elderberry shrubs) for the federally threatened valley elderberry longhorn beetle, although no evidence of use by the valley elderberry longhorn beetle has been detected. Construction of the proposed project would result in the removal of one elderberry shrub, with two stems greater than 1 inch in diameter at ground level, which have been determined to be habitat for the beetle. The project site does not contain any other rare, threatened, or endangered species or habitat. No critical habitat for any listed species occurs on the project site.

The Applicant proposes to minimize and mitigate the effects to the covered species associated with the covered activities by fully implementing the Plan. The purpose of the proposed Plan's conservation program is to promote the biological conservation of the valley elderberry longhorn beetle. The Applicant will minimize and mitigate the impacts of taking the valley elderberry longhorn beetle by removing the single elderberry shrub that is currently on the project site and by purchasing two credits at a Service-approved conservation bank. Each credit includes an established ratio of elderberry seedlings and native riparian plant seedlings.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed Plan, which includes measures to minimize and mitigate impacts of the project on the valley elderberry longhorn beetle. Three alternatives to the taking of the listed species under the Proposed Action are considered in the proposed Plan. Under the No Action Alternative, no permit would be issued and no construction or landscaping would occur. Under the Reduced Take Alternative #1, the elderberry shrub would remain onsite and activities would be modified. Under the Reduced Take Alternative #2, the elderberry shrub would remain onsite and be incorporated within the landscaping. Stems under 5 inches in diameter would be removed and the remaining stem would be pruned.

The Service has made a preliminary determination that approval of the Proposed Plan qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) and as a ''low-effect'' plan as defined by the Habitat Conservation Planning Handbook (November 1996). Determination of Low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the proposed Plan would result in minor or negligible effects on federally listed, proposed, and

candidate species and their habitats; (2) implementation of the proposed Plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the proposed Plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the proposed Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to Mr. George Shimboff for the incidental take of the valley elderberry longhorn beetle from development of the Applicant's parcel on Christine Drive, Vacaville, California.

Dated: August 8, 2003.

Catrina M. Martin,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–20790 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for Kneeland Prairie Penny-Cress (*Thlaspi californicum*)

AGENCY: 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 Kneeland Prairie Penny-cress (*Thlaspi californicum*). The plan includes specific criteria and measures to be taken in order to effectively recover the species to the point where delisting is warranted.

ADDRESSES: Copies of the recovery plan are available by written request addressed to the Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California. For a fee, 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 copies of a plan depends on the number of pages of the plan. An electronic copy of this recovery plan is also available at *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm.*

FOR FURTHER INFORMATION CONTACT: David Imper, Fish and Wildlife Ecologist, at the above Arcata address (telephone: 707–822–7201).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). 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 Act 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. The draft recovery plan for *Thlaspi californicum* was available for public comment from October 9, 2002, through December 9, 2002, (67 FR 62979). We received and reviewed three comment letters on the draft recovery plan.

Thlaspi californicum is a perennial member of the mustard family (Brassicaceae), restricted to outcrops of serpentine substrate located in Kneeland Prairie, Humboldt County, California. It was federally listed as an endangered species on February 9, 2000 (65 FR 6332). Historical loss of the serpentine habitat, combined with the potential for future loss of habitat is the primary current threat to the species.

This recovery plan includes conservation measures designed to ensure that a self-sustaining population of *Thlaspi californicum* will continue to exist, distributed throughout its extant and historic range. Specific recovery actions focus on protection of the serpentine outcrops and surrounding oak woodland and grasslands. The recovery plan also addresses the need to re-establish multiple sexually reproducing colonies of *Thlaspi californicum* within the native serpentine plant community present in Kneeland Prairie. The ultimate objective of this recovery plan is to delist *Thlaspi californicum* through implementation of a variety of recovery measures including: (1) Protection of the extant population and its habitat, involving acquisition or other legal protective mechanism, monitoring, and coordination with the landowners; (2) research on the species biology and habitat requirements; (3) augmentation of existing colonies and establishment of new colonies; and (4) ex-situ conservation measures including artificial rearing and seed banking.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 7, 2003.

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1, Fish and Wildlife Service.

[FR Doc. 03–20707 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Safe Harbor Agreement for White River Spinedace at Indian Springs, White Pine County, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Walter and Carrol Cripps (Applicant) have applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (SHA) among the Applicant, Nevada Department of Wildlife (NDOW), and the Service. The SHA provides for habitat protection and the introduction of the White River Spinedace (*Lepidomeda albivallis*) within approximately 3.5 acres of spring, stream, and pond habitat on private property in White Pine County, Nevada. The proposed duration of the SHA is for 5 years and the permit is for 30 years.

The Service has made a preliminary determination that the proposed SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination is contained in an Environmental

Action Statement, which also is available for public review.

DATES: Written comments must be received by 5 p.m. on September 15, 2003.

ADDRESSES: Comments should be addressed to Robert Williams, Field Supervisor, Nevada Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, Nevada 89502, facsimile number (775) 861–6300 (*see* **SUPPLEMENTARY INFORMATION**, Public Review and Comment).

FOR FURTHER INFORMATION CONTACT: Laurie Sada, Assistant Field Supervisor, at the above address or by calling (775) 861–6300.

SUPPLEMENTARY INFORMATION:

Background

The primary objective of the proposed SHA is to introduce a refugia population of White River spinedace and to protect and maintain desert spring and stream habitat at Indian Spring to benefit White River spinedace by relieving the landowner, who enters into the provisions of the proposed SHA, from any additional section 9 liability under the Endangered Species Act beyond that which exists at the time a final SHA is signed (''regulatory baseline''). SHAs encourage landowners to conduct voluntary conservation activities and assures them that they will not be subjected to increased endangered species restrictions should their beneficial stewardship efforts result in increased endangered species populations. Application requirements and issuance criteria for enhancement of survival permits through SHAs are found in 50 CFR 17.22(c). As long as the enrolled landowner maintains their baseline responsibilities, they may make any other lawful use of the property during the permit term, even if such use results in the take of individual White River spinedace or harm to their habitat.

The proposed SHA includes (but is not limited to) the following actions: (1) NDOW and the Service introduce White River spinedace at Indian Spring (approximately 100 spinedace over the course of several introductions between the fall of 2003 and spring of 2005); (2) the Applicant allows NDOW and the Service access to private property for monitoring and maintenance of the White River spinedace at Indian Spring; and (3) the Applicant allows habitat maintenance activities to ensure White River spinedace survival at Indian Spring.

The proposed SHA stipulates that the introduced population of White River spinedace is secure from various land management activities for a period of 5 years, which include: (1) Grazing of livestock upslope of or within 91.5 m (300 ft) of Indian Spring sources and the stream, or within 7.6 m (25 ft) of the pond; (2) interruption, reduction, or elimination of water flow from the spring sources to the pond; (3) stocking of exotic fish or amphibian species at Indian Spring sources and the stream or pond; (4) removal of vegetation within 91.5 m (300 ft) of Indian Spring sources and the stream, or within 7.6 m (25 ft) of the pond; (5) earthmoving activities within 91.5 m (300 ft) of Indian Spring sources and the stream, or within 7.6 m (25 ft) of the pond; (6) implementing controlled burning activities within 91.5 m (300 ft) of Indian Spring sources and the stream, or within 7.6 m (25 ft) of the pond; and (7) draining the pond of more than 25 percent of its capacity.

After protecting the spring, stream, and pond habitat at Indian Spring for the 5-year term, the Applicant may then conduct otherwise lawful activities on their property that result in the partial elimination of the spring, stream, or pond habitat and the incidental taking of White River spinedace as a result of such habitat elimination. However, the restrictions on returning the White River spinedace to its original baseline condition include: (1) White River spinedace may not be captured, killed, or otherwise directly ''taken''; (2) the NDOW and the Service will be notified a minimum of 3 months prior to the activity and given the opportunity to capture, rescue, and/or translocate any White River spinedace, if necessary and appropriate; and (3) return to baseline conditions must be completed within the 30-year term of the permit issued to the Applicant.

The Service has made a preliminary determination that approval of the proposed SHA qualifies as a categorical exclusion under the NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) based on the following criteria: (1) Implementation of the proposed SHA would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the proposed SHA would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the proposed SHA, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. This is more fully explained in our Environmental Action Statement.

Based upon this preliminary determination, the Service does not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the proposed SHA, including a map of the enrolled land area, legal descriptions, and references should contact the office and personnel listed in the **ADDRESSES** section. Documents also will be available for public inspection, by appointment, during normal business hours at this office (*see* **ADDRESSES**).

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). All comments received on the permit application and proposed SHA, including names and addresses, will become part of the administrative record and may be released to the public. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Decision

We will evaluate the permit application, the proposed SHA, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act and NEPA regulations. If the requirements are met, the Service will sign the proposed SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of the White River spinedace incidental to otherwise lawful activities of the project. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: August 8, 2003.

Catrina M. Martin,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–20789 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act.

A request extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Production Estimate, Construction Sand and Gravel and Crushed and Broken Stone.

Current OMB approval number: 1028–0065.

Abstract: This collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, industry, education programs, and the general public. One publication is the ''Mineral Commodity Summaries,'' the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

Bureau form number: 9–4042–A and 9–4124–A.

Frequency: Quarterly and Annually.

Description of respondents: Producers of industrial minerals and metals.

Annual Responses: 3,269.

Annual burden hours: 707.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 03–20762 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–ET; GPO–03–0005; IDI–04319]

Public Land Order No. 7578; Partial Revocation of Public Land Order No. 1479; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 0.23 acre of National Forest System land withdrawn for the Forest Service's Priest Lake Recreation Area. This action will open the land to such forms of disposition as may by law be made of National Forest System land.

EFFECTIVE DATE: September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3867.

SUPPLEMENTARY INFORMATION: The land is no longer needed for the purpose for which it was withdrawn, and the revocation is needed to make the land available for disposal under the Small Tract Act. The land has been and will remain open to mineral leasing.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 1479, which withdrew National Forest System land for Forest Service recreation areas, administrative and public service sites, is hereby revoked insofar as it affects the following described land:

Boise Meridian
Kaniksu National Forest
Priest Lake Recreation Area
T. 61 N., R. 4 W.,
sec. 8, lot 2, a parcel of land identified as S.T.A. ID–229.

The area described contains 0.23 acre in Bonner County.

2. At 9 a.m on September 15, 2003, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: July 25, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–20744 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1430–ET; MIES–16817]

Public Land Order No. 7580; Revocation of Executive Order Dated June 30, 1851; MI

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety, an 1851 Executive Order which reserved 58.75 acres of public land for the Grand Traverse Light Station. The land is no longer needed by the United States Coast Guard for lighthouse purposes. This order will open 16.37 acres of the formerly reserved land to surface entry.

DATE: September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, 703–440–1663.

SUPPLEMENTARY INFORMATION: All of the land, except as described in Paragraph 2, has been conveyed out of Federal ownership. This is a record clearing action only for the land that is no longer in Federal ownership.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Executive Order dated June 30, 1851, which reserved public land for lighthouse purposes, is hereby revoked in its entirety.

2. At 10 a.m. on September 15, 2003, the land described below will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on September 15, 2003, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Michigan Meridian

T. 32 N., R. 10 W.,
Grand Traverse Light Station Reservation, located in lot 3, sec. 6, being more particularly described as:
Beginning at the intersection of secs. 5, 6, 7 and 8, T. 32 N., R. 10 W.,
Thence, N. 53°27′ W., 34.456 chains, to Angle Point # 1, the place of beginning,
N. 0°18′ E., 12.600 chains, to Angle Point # 2 on the present shoreline of Lake Michigan,
Thence, with the meanders of Lake Michigan,
S. 89°41′ W., 2.199 chains,
S. 70°45′ W., 3.741 chains,
N. 88°22′ W., 4.781 chains,
S. 80°33′ W., 2.563 chains,
S. 19°35′ W., 5.144 chains,
S. 9°47′ E., 6.241 chains to Special Meander Corner,
S. 89°42′ E., 13.636 chains to Angle Point #1, the place of beginning.
The area described contains 16.37 acres in Leelanau County.

Dated: July 25, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–20745 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1430–ET; NMNM 6337]

Public Land Order No. 7579; Partial Revocation of Public Land Order No. 2198; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects approximately 1,433 acres of lands withdrawn for use by the Bureau of Indian Affairs. This order opens the lands to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Albert Gonzales, BLM Farmington Field Office, 1235 La Plata Highway, Farmington, NM 87401, 505–599–6334.

SUPPLEMENTARY INFORMATION: The partial revocation will facilitate an administrative boundary adjustment between the Bureau of Land Management and the Navajo Indian Reservation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 2198, which withdrew lands for use by the Bureau of Indian Affairs, is hereby revoked insofar as it affects the following described lands:

New Mexico Principal Meridian

T. 19 N., R. 7 W.,
sec. 17, S½;
sec. 19;
sec. 21, N½, and SW¼.

The areas described aggregate approximately 1,433 acres in McKinley County.

2. At 10 a.m. on September 15, 2003, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on September 15, 2003, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on September 15, 2003, the lands will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: July 25, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–20743 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–VB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gauley River National Recreation Area, West Virginia

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a Plan of Operations and Environmental Assessment for a 30-day public review at Gauley River National Recreation Area, Fayette County, WV

SUMMARY: The National Park Service (NPS), in accordance with section 9.52(b) of title 36 of the Code of Federal Regulations has received from Excel Energy Inc., a Plan of Operations for drilling and production of the Mower #2 and #3 gas wells, from a surface location 7 miles west of the Summersville Dam, adjacent to State Route 3/3, on a peninsula known as Koontz Bend, within the Gauley River National Recreation Area. Additionally, the NPS has prepared an Environmental Assessment for the site of the proposed wells.

DATES: The above documents are available for public review and comment for a period of 30 days from the publication date of this notice in the **Federal Register**.

ADDRESSES: The Plan of Operations and Environmental Assessment are available for public review and comment in the Office of the Superintendent, Gauley River National Recreation Area, 104 Main Street, Glen Jean, West Virginia. Copies of the Plan of Operations are available, for a duplication fee, from the Superintendent, Gauley River National Recreation Area, P.O. Box 246, Glen Jean, West Virginia 25846.

FOR FURTHER INFORMATION CONTACT: John Perez, Biologist, Gauley River National Recreation Area, P.O. Box 246, Glen Jean, West Virginia 25846, Telephone: 304–465–6537, e-mail at *John_Perez@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to submit comments about this document within the 30 days, mail them to the post office address provided above, hand-deliver them to the park at the street address provided above, or electronically file them to the e-mail address provided above. Our practice is to make comments, including names and home addresses of responders, available for public review during regular business hours.

Dated: April 18, 2003.

Calvin F. Hite,

Superintendent, Gauley River National Recreation Area.

[FR Doc. 03–20753 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–JW–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of the Draft General Management Plan/Wilderness Study/ Draft Environmental Impact Statement, Pictured Rocks National Lakeshore

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(C), the National Park Service (NPS) announces the availability of a Draft General Management Plan/Wilderness Study/ Draft Environmental Impact Statement (EIS) for Pictured Rocks National Lakeshore (PIRO), Michigan.

DATES: There will be a 90-day public review period for comments on this document. Comments on the Draft EIS must be received no later than 90 days after the Environmental Protection Agency publishes its notice of availability in the **Federal Register**. Consistent with section 3(d)(1) of the Wilderness Act, two public hearings will be held on the draft wilderness study on August 26, from 7–8 p.m. in Munising, Michigan, and August 27, from 7–8 p.m. in Grand Marais, Michigan. In Munising, the meeting will be held in the Community Room of the Munising Community Credit Union at 200 East State Highway M–28. In Grand Marais, the meeting will be held in the Gymnasium of the Burt Township Public School located at 27 Colwell Street.

In addition, public open houses for information about, or to make comment on, the General Management Plan/ Wilderness Study/Draft EIS will be held in the region during the comment period. These open houses are scheduled as follows:

August 25: Marquette, Michigan—6 p.m.–8 p.m.—Open House on GMP/WS: Marquette Room, Northern Michigan University, Don H. Bottum University Center, 1401 Presque Isle Avenue, Marquette, Michigan.

August 26: Munising, Michigan—5:30 p.m.–7 p.m.—Open House on GMP/WS: 7 p.m.–8 p.m.—Hearing on Wilderness: Community Room, Munising Community Credit Union, 200 East State Highway M–28, Munising, Michigan.

August 27: Grand Marais, Michigan—5:30 p.m.–7 p.m.—Open House on GMP/WS: 7 p.m.–8 p.m.—Hearing on Wilderness: Gymnasium, Burt Township Public School, 27 Colwell Avenue, Grand Marais, Michigan.

August 28: Lansing, Michigan—12:30 p.m.–2:30 p.m.—Open House on GMP/WS: Holiday Inn South Convention Center, 6820 South Cedar Street, Lansing, Michigan.

August 28, Novi, Michigan—6 p.m.–8 p.m.—Open House on GMP/WS: DoubleTree Hotel Novi, 2700 Sheraton Drive, Novi, Michigan.

These open houses will be announced in the local media and the park's Web site. Information about meeting times and places will be available by contacting the park's headquarters at 906–387–2607, or visiting the park's Web site at *http://www.nps.gov/piro/gmp.htm.*

ADDRESSES: Copies of the Draft General Management Plan/Wilderness Study/ Draft EIS are available by request by writing to Karen Gustin, Superintendent, Pictured Rocks National Lakeshore, P.O. Box 40, Munising, MI 49862–0040, by phone 906–387–2607, or by e-mail message at *piro_gmp@nps.gov.* The document can be picked-up in person at the park's headquarters at N8391 Sand Point Road, Munising, MI.

FOR FURTHER INFORMATION CONTACT: Karen Gustin, Superintendent, Pictured Rocks National Lakeshore, or by calling 906–387–2607.

SUPPLEMENTARY INFORMATION: The purpose of this wilderness study is to determine if and where lands and waters within PIRO should be proposed for wilderness designation. The study identifies two possible wilderness configurations within the park, including a no wilderness alternative, and evaluates their effects. Based on the findings of this study, a formal wilderness proposal may be submitted to the Director of the NPS for approval and subsequent consideration by the Department of the Interior, the President of the United States, and Congress.

Persons wishing to comment may do so by any one of several methods. They may attend the public hearing or open houses noted above. They may mail comments to Karen Gustin, Superintendent, Pictured Rocks National Lakeshore, P.O. Box 40, Munising, MI 49862–0040, or call the Superintendent at 906–387–2607. They also may comment via e-mail to *piro_gmp@nps.gov* (include name and return address in the e-mail message). Finally, they may hand-deliver comments to park headquarters at Pictured Rocks National Lakeshore, N8391 Sand Point Road, Munising, MI 49862–0040.

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

The responsible official is Mr. Ernest Quintana, Acting Regional Director, Midwest Region.

Dated: July 9, 2003.

Ernest Quintana,

Acting Regional Director, Midwest Region.

[FR Doc. 03–20752 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–H3–P

DEPARTMENT OF THE INTERIOR

National Park Service

Great Sand Dunes National Park Advisory Council Meeting

AGENCY: National Park Service, DOI.

ACTION: Announcement of meeting.

SUMMARY: Great Sand Dunes National Monument and Preserve announces the date of a meeting of the Great Sand Dunes National Park Advisory Council, which was established to provide guidance to the Secretary on long-term planning for Great Sand Dunes National Monument and Preserve.

DATES: The meeting date is:

1. Sept. 5, 2003, 1 p.m.–9 p.m., Westcliffe, Colorado.

ADDRESSES: The meeting location is:

1. Westcliffe, Colorado—All Aboard Westcliffe, Inc., 110 Rosita Ave., Westcliffe, CO 81252–1415.

FOR FURTHER INFORMATION CONTACT: Steve Chaney, 719–378–2314.

SUPPLEMENTARY INFORMATION: This notice announces the third meeting of the Great Sand Dunes National Park Advisory Council. At this meeting, the council will discuss the fundamental resources and values of Great Sand Dunes National Monument and Preserve.

John Crowley,

Acting Regional Director.

[FR Doc. 03–20751 Filed 8–13–03; 8:45 am]

BILLING CODE 4312–LL–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the State University of West Georgia, Carrollton, GA, and in the Control of the Georgia Department of Transportation, Atlanta, GA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the State University of West Georgia, Carrollton, GA, and in the control of the Georgia Department of Transportation, Atlanta, GA. The human remains and associated funerary objects were removed from Richmond County, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice corrects the number of associated funerary objects reported in a Notice of Inventory Completion published in the **Federal Register** on January 11, 2002 (FR Doc 02-734, page 1507). The notice described the human remains of one Native American individual and six associated funerary objects, including one partial shell-tempered plain globular jar with flaring rim. Although the partial globular jar was included in the Rae's Creek inventory of human remains and associated funerary objects, the jar (accession number 303) has not been located thus far in the Rae's Creek collection or in any of the curated collections at the Antonio J. Waring, Jr., Archaeology Laboratory, State University of West Georgia, Carrollton, GA. The original notice is corrected by substituting paragraphs four through seven with the following paragraphs --

In 1988, human remains representing one individual were excavated from the Rae's Creek site (9Ri327), Richmond County, GA, by Dr. Morgan R. Crook, Jr., of Georgia State University, Atlanta, GA. The work was conducted as part of a highway construction project under Georgia Department of Transportation/ Federal Highway Administration contract M-750 (4). The remains are curated at the Antonio J. Waring, Jr., Archaeology Laboratory, State University of West Georgia, Carrollton, GA. No known individual was identified. The five associated funerary objects are two columella shell ear pins, two faceted glass beads, and one chert biface.

The Rae's Creek site is located near the confluence of Rae's Creek and the Savannah River. The human remains and associated funerary objects date to the early 1700s based on the artifacts recovered from the site, such as the faceted glass beads, which date to that time period. The artifacts suggest a Creek Indian affiliation. Consultation evidence presented by representatives of the Creek tribal governments indicates that this area was within the traditional occupation territory of the Creeks during this time period.

Officials of the Georgia Department of Transportation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Georgia Department of Transportation also have determined that, pursuant to 43 CFR 10.2 (d)(2), the five objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Georgia Department of Transportation also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Eric Anthony Duff, NAGPRA Coordinator, Georgia Department of Transportation, Office of Environment/ Location, 3993 Aviation Circle, Atlanta, GA 30336-1593, telephone (404) 699-4437, facsimile (404) 699-4440, e-mail *eric.duff@dot.state.ga.us*, before September 15, 2003. Repatriation of the human remains and associated funerary objects to the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma may proceed after that date if no additional claimants come forward.

The Georgia Department of Transportation is responsible for notifying the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma that this notice has been published.

Dated: July 3, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–20758 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Defense, U.S. Army, Joint Readiness Training Center and Fort Polk, Fort Polk, LA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the U.S. Department of Defense, U.S. Army, Joint Readiness Training Center and Fort Polk, Fort Polk, LA. The human remains were removed from a site on the Fort Polk Military Reservation in Sabine Parish, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by U.S. Department of Defense, U.S. Army professional staff, including individuals from the Environmental Center; U.S. Army Corps of Engineers, St. Louis District; and Center of Engineering and Research Laboratory, in consultation with representatives of the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Caddo Indian Tribe of Oklahoma;

Choctaw Nation of Oklahoma; Chitimacha Tribe of Louisiana; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians, Louisiana; Mississippi Band of Choctaw Indians, Mississippi; Poarch Band of Creek Indians of Alabama; and Tunica-Biloxi Indian Tribe of Louisiana.

The Joint Readiness Training Center and Fort Polk has determined that the human remains reported in this notice cannot be culturally affiliated with an Indian tribe as defined in NAGPRA, 25 U.S.C. 3001 (7), and are considered culturally unidentifiable. Until final promulgation of Section 10.11 of NAGPRA regulations, and according to its charter, the Native American Graves Protection and Repatriation Review Committee is responsible for recommending to the Secretary of the Interior specific actions for the disposition of culturally unidentifiable human remains. In December 2001, the Joint Readiness Training Center and Fort Polk proposed to repatriate one set of culturally unidentifiable human remains to the Caddo Indian Tribe of Oklahoma. The proposal was considered by the Review Committee at its May 31–June 2, 2002, meeting.

An August 30, 2002, letter from the National Park Service to the Joint Readiness Training Center and Fort Polk, conveyed the Review Committee's recommendation that disposition of the human remains to the Caddo Indian Tribe of Oklahoma may proceed following publication of a notice of inventory completion in the Federal Register. This notice fulfills that requirement.

In 1977 or 1978, human remains representing a minimum of one individual were removed from the Eagle Hill Training Airstrip site, Fort Polk Military Reservation, Sabine Parish, LA. The Airstrip site was excavated under the direction of Dr. Frank Servello of the University of Southwestern Louisiana. The human remains, consisting of one tooth, were found in a spoils pile adjacent to the Airstrip site. Dr. Robert Corruccini, professor of paleontological anthropology at Southern Illinois University, identified the tooth as probably being from a prehistoric Native American. No known individual was identified. No associated funerary objects are present.

Officials of the Joint Readiness Training Center and Fort Polk have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Joint Readiness Training Center and Fort Polk also have determined that, pursuant to 25 U.S.C. 3001 (2), there is no relationship of shared group identity that can reasonably be traced between the Native American human remains and any present-day Indian tribe or group. In accordance with the recommendations of the Native American Graves Protection and Repatriation Review Committee, the disposition of the Native American human remains will be to the Caddo Indian Tribe of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact James D. Grafton, Fort Polk Cultural Resources Management Program, 1645 23rd Street, Building 2515, Fort Polk, LA 71459, telephone (337) 531-6011, before September 15, 2003. Repatriation of the human remains to the Caddo Indian Tribe of Oklahoma may proceed after that date if no additional claimants come forward.

The Joint Readiness Training Center and Fort Polk is responsible for notifying the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Caddo Indian Tribe of Oklahoma; Choctaw Nation of Oklahoma; Chitimacha Tribe of Louisiana; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians, Louisiana; Mississippi Band of Choctaw Indians, Mississippi; Poarch Band of Creek Indians of Alabama; and Tunica-Biloxi Indian Tribe of Louisiana that this notice has been published.

Dated: July 17, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–20759 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Museum of Northern Arizona, Flagstaff, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Northern Arizona, Flagstaff, AZ. The human remains and associated funerary objects were removed from an unidentified site in the Salt River area of central Arizona.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Museum of Northern Arizona professional staff in consultation with representatives of the Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Yavapai Nation, Arizona; Fort Mojave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

At an unknown date, cremated human remains representing a minimum of one individual were removed from an unidentified site in the Salt River area of central Arizona. The human remains and associated funerary objects were given to Mrs. Roslein Birdsell by a relative in 1955 or 1956. No known individual was identified. The three associated funerary objects are a Casa Grande red-on-buff jar and two quartz crystals. A chalcedony projectile point that was originally associated with the human remains subsequently disappeared. In 2000, Mrs. Birdsell transferred control of the human remains and the three associated funerary objects to the Museum of Northern Arizona.

Casa Grande red-on-buff pottery vessels generally date to A.D. 700-900. Archeological evidence indicates that the Salt River area of central Arizona was occupied during the period A.D. 700-900 by the Hohokam people, for whom cremation was a common mortuary practice. Archeological, historical, and oral tradition evidence indicate that there is a relationship of shared group identity between the Hohokam people and the present-day Piman and O'odham cultures, represented by the Ak-Chin Indian Community of the Maricopa (Ak Chin)

Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona. Hopi and Zuni oral traditions also indicate that segments of the prehistoric Hohokam population migrated to areas occupied by the ancestors of the Hopi and Zuni and were assimilated into the resident populations.

Officials of the Museum of Northern Arizona have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Museum of Northern Arizona also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the three objects described above are reasonably believed to have been placed with the individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Northern Arizona have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Elaine Hughes, Museum of Northern Arizona, 3101 North Fort Valley Road, Flagstaff, AZ 86001, telephone (928) 774-5211, extension 228, before September 15, 2003. Repatriation of the human remains and associated funerary objects to the Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Museum of Northern Arizona is responsible for notifying the Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Yavapai Nation, Arizona; Fort Mojave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: July 9, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–20755 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Oregon State Museum of Anthropology, University of Oregon, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Oregon State Museum of Anthropology, University of Oregon, Eugene, OR. The human remains and associated funerary objects are from the Kawumkan Springs Midden, Klamath County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Oregon State Museum of Anthropology professional staff in consultation with representatives of the Klamath Indian Tribe of Oregon.

In 1949, human remains representing a minimum of 19 individuals were removed from the Kawumkan Springs Midden, Klamath County, OR, during legally authorized excavations by University of Oregon staff archeologists. The museum accessioned the human remains into the collection the same year. No known individuals were identified. The nine associated funerary objects are three pestles or atlatl weights, two fleshers, one mano, one wolf mandible, one projectile point foreshaft, and one stone point that may have contributed to the associated individual's death.

Historical documents, ethnographic sources, and oral history indicate that Klamath peoples have occupied this area of south-central Oregon since precontact times. Based on archeological context, the 19 individuals described above were determined to be Native American, of probable Klamath cultural affiliation.

Officials of the Oregon State Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of 19 individuals of Native American ancestry. Officials of the Oregon State Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the nine objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Klamath Indian Tribe of Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact C. Melvin Aikens, Oregon State Museum of Anthropology, 1224 University of Oregon, Eugene, OR 97403-1224, telephone (541) 346-5115, before September 15, 2003. Repatriation of the human remains and associated funerary objects to the Klamath Indian Tribe of Oregon may proceed after that date if no additional claimants come forward.

The Oregon State Museum of Anthropology is responsible for notifying the Klamath Indian Tribe of Oregon that this notice has been published.

Dated: July 2, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–20756 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains and associated funerary objects were removed from Barnstable, Bristol, Dukes, and Plymouth Counties, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

The human remains and associated funerary objects are described in this notice according to county and town, and site location when available.

BARNSTABLE COUNTY, MA.

Barnstable, MA.

In 1867, human remains representing one individual were removed from Barnstable, Barnstable County, MA, by J. Elliot Cabot and were donated to the Peabody Museum of Archaeology and Ethnology by Mr. Cabot in the same year. No known individual was identified. The three associated funerary objects are brass kettle fragments.

Osteological characteristics indicate that the individual is Native American. The interment most likely dates to the Historic/Contact period (post-A.D. 1500). The placement of European kettles as mortuary offerings was widespread among postcontact North American native groups. Oral tradition and historical documentation indicate that Barnstable, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1933, human remains representing one individual that were removed from Barnstable, Barnstable County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by Edward Brooks. The human remains were removed at an unknown date by an unknown collector. No known individual was identified. The 33 associated funerary objects are 9 silver spoon fragments, 4 triangular Levanna-style arrowheads, 3 Levanna-style preforms, 1 piece of worked slate, 7 pieces of worked bone, 1 bone awl, 1 spatula-shaped bone implement, and 7 pieces of turtle shell.

Osteological characteristics indicate that the individual is Native American. The interment most likely dates to the Historic/Contact period (post-A.D. 1500). Based on examination, the associated silver spoon probably dates from A.D. 1650 to 1730. Oral tradition and historical documentation indicate that Barnstable, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1966, human remains representing one individual that were removed from Sandy Neck in Barnstable, Barnstable County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by Sidney Callis through Edward Hunt. The human remains were removed by Mr. Callis in 1961. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that the individual is Native American. The interment most likely dates to the Late Woodland period or later (post-A.D. 1000). Museum documentation and published accounts indicate that Sandy Neck is a Late Woodland/Contact period site (A.D. 1000–1650). Shell-tempered pottery found on the site supports a Late Woodland and later date (post-A.D. 1000) in southern New England. Oral tradition and historical documentation indicate that Barnstable, MA, is located within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Bourne, MA.

In 1911, human remains representing three individuals were removed from the Grove Field Ossuary in Bourne, Barnstable County, MA, during a Peabody Museum of Archaeology and Ethnology expedition led by C.C. Willoughby. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. Published information indicates that the human remains most likely date from the Late Woodland to Historic/Contact periods (A.D. 1000-1500). A copper point found in the immediate vicinity of the Grove Field Ossuary confirms a postcontact date. Oral tradition and historical documentation indicate that Bourne, MA, is located within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Bournedale, MA.

In 1955, human remains representing two individuals that were removed from Bournedale, Barnstable County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by W.K. Carter. The human remains were probably collected in 1880 by an unknown individual. No known

individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. A note included with the human remains states that they were discovered in an ''old Indian burying ground beside Black Lake, Bournedale, Cape Cod, 1880.'' The interments most likely date to the Historic/Contact period (post-A.D. 1500). The pattern of copper staining on some of the human remains from the site indicates that the human remains were interred some time after contact. Oral tradition and historical documentation indicate that Bournedale, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Chatham, MA.

In 1935, human remains representing 21 individuals were removed from the Bars Inn Farm on Morris Island in Chatham, Barnstable County, MA, after discovery by men working in the area. The human remains were given to Howard Nickerson, who donated them to the Peabody Museum of Archaeology and Ethnology in the same year. No known individuals were identified. The three associated funerary objects are ceramic sherds.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Late Woodland or Historic/Contact period (post-A.D. 1000). A report by Frederick Johnson, who excavated the site, describes finding wood, pottery, a carved bone implement, and red ochre associated with the human remains, all of which suggest a Late Woodland or later date. Oral tradition and historical documentation indicate that Chatham, MA, is located within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Chathamport, MA.

In 1940, human remains representing three individuals were removed from Chathamport, Barnstable County, MA, by James M. Andrews and Janet W. Raymond, who donated the human remains to the Peabody Museum of Archaeology and Ethnology in the same year. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. Museum documentation indicates that the human remains were discovered on the property of Mrs. Raymond, an area that was locally known as ''Indian Burial Hill.'' The interments most likely date to the Historic/Contact period (post-A.D. 1500). The pattern of copper stains on some of the human remains from the site indicates that the human remains were interred some time after contact. Oral tradition and historical documentation indicate that Chathamport, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Eastham, MA.

In 1935, human remains representing five individuals were removed from the Hemenway site in Eastham, Barnstable County, MA, during a Peabody Museum of Archaeology and Ethnology expedition led by Frederick Johnson. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Historic/Contact period (post-A.D. 1500). Objects that were recovered from the site but are not associated with the burials include paddle-marked and cord-marked pottery, rolled copper or brass beads, and an iron implement, all of which suggest a postcontact date. Oral tradition and historical documentation indicate that Eastham, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Hyannis, MA.

In 1949, human remains representing four individuals that were removed from Hyannis, Barnstable County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by the Harvard University Department of Anthropology. The human remains were collected by K. Hall, Edward Hunt, Charles Shade, and R. Vidala at an unknown date. No known individuals were identified. The one associated funerary object is a fragmentary Iroquoian- or Niantic-style pottery vessel.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Late Woodland or Historic/Contact period (A.D. 1000-1650). The fragmentary Iroquoian- or Niantic-style pottery vessel found with some of the human remains suggests a Late Woodland or Historic/Contact date (A.D. 1000-1650). New England ceramics that are closely related to Iroquoian ceramic styles date to the Late Woodland and Historic/Contact period (A.D. 1000-1650 and later). Oral tradition and historical documentation indicate that Hyannis, MA, is located within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

North Truro, MA.

In 1891, human remains representing six individuals were removed from North Truro, Barnstable County, MA, during a Peabody Museum of Archaeology and Ethnology expedition led by M.H. Saville. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. The interment most likely dates to the Late Woodland period or later (post-A.D. 1000). According to museum documentation, objects that were recovered from the site but are not associated with the human remains include bone implements, pottery pipe fragments, shell-tempered pottery sherds, and Levanna-style projectile points, all of which support a Late Woodland or later date (post-A.D. 1000). Oral tradition and historical documentation indicate that North Truro, MA, is located within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated

with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1908, human remains representing two individuals that were removed from North Truro, Barnstable County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by M.H. Saville. The human remains were removed in 1891 during a Peabody Museum of Archaeology and Ethnology expedition led by Mr. Saville. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. The interment most likely dates to the Late Woodland period or later (post-A.D. 1000). According to museum documentation, objects that were recovered from the site but are not associated with the human remains include bone implements, pottery pipe fragments, shell-tempered pottery sherds, and Levanna-style projectile points, all of which support a Late Woodland or later date (post-A.D. 1000). Oral tradition and historical documentation indicate that North Truro, MA, is located within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1936, human remains representing one individual that were removed from North Truro, Barnstable County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by the Harvard Dental School. The human remains were collected by Frank R. Dickerman after they were discovered during railroad excavations in 1873. Mr. Dickerman gave the human remains to the Harvard Dental School. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that the individual is Native American. Museum documentation suggests that the interment most likely dates to the Historic/Contact period (post-A.D. 1500). A label found with the human remains states that the human remains are probably 200 years old. Oral tradition and historical documentation indicate that North Truro, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1956, human remains representing three individuals that were removed from the Old Colony Railroad site in North Truro, Barnstable County, MA, were found in the museum. The human remains were collected in 1891 during a Peabody Museum of Archaeology and Ethnology expedition led by M.H. Saville. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Late Woodland period or later (post-A.D. 1000). According to museum documentation, objects that were recovered from the site but are not associated with the human remains include bone implements, pottery pipe fragments, shell-tempered pottery sherds, and Levanna-style projectile points, all of which support a Late Woodland or later date (post-A.D. 1000). Oral tradition and historical documentation indicate that North Truro, MA, is located within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Sandwich, MA.

In 1908, human remains representing one individual were removed from Sandwich, Barnstable County, MA, by L.C. Jones, who donated them to the Peabody Museum of Archaeology and Ethnology in the same year. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that the individual is Native American. The interment most likely dates to the Historic/Contact period (post-A.D. 1500). Documentation provided by the collector notes that the human remains were buried with woven cloth and copper ornaments. The use of copper ornaments and textiles in burials suggests a date from the Historic/Contact period (post- A.D. 1500). Oral tradition and historical documentation indicate that Sandwich, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

South Truro, MA.

In 1950, human remains representing one individual that were removed from the Ryder Beach site in South Truro, Barnstable County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by Ross Moffett, who removed the human remains in 1948. No known individual was identified. No associated funerary objects are present. Objects found at the site that are not in the possession of the Peabody Museum of Archaeology and Ethnology include shell-tempered pottery, a dog burial, Levanna-style projectile points, and steatite pipe fragments.

Osteological characteristics indicate that the individual is Native American. The interment most likely dates to the Late Woodland period or later (post-A.D. 1000), based on the presence of shell-tempered pottery and Levanna-style projectile points. Oral tradition and historical documentation indicate that South Truro, MA, is located within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Yarmouth, MA.

In 1966, human remains representing 10 individuals were removed from the Purcell site in Yarmouth, Barnstable County, MA, by Frank Schambach and Howard Bailit. Nine of the individuals were donated to the Peabody Museum of Archaeology and Ethnology by Edmund Purcell in the same year. One individual was donated to the Peabody Museum of Archaeology and Ethnology by Mr. Schambach in 1968. No known individuals were identified. The 14 associated funerary objects are potsherds. According to museum documentation, objects that were associated with the human remains but are not in the possession of the Peabody Museum of Archaeology and Ethnology

include bone points, felsite projectile points, and pottery.

Osteological characteristics indicate that the individuals are Native American. The interments most likely dates to the Late Woodland period (A.D. 1000-1500). Published documentation, as well as analysis of projectile points and pottery recovered from the site, both support a Late Woodland (A.D. 1000-1500) date. Oral tradition and historical documentation indicate that Yarmouth, MA, is located within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

BRISTOL COUNTY, MA.

Berkley, MA.

In 1968, human remains representing one individual were removed from the Bear Swamp site in Berkley, Bristol County, MA, by Arthur C. Staples and Roy C. Athearn of the Massachusetts Archaeological Society and were donated to the Peabody Museum of Archaeology and Ethnology by the Massachusetts Archaeological Society in 1969. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that the individual is Native American. Although the Bear Swamp site generally dates to the Late Archaic period (3000-1000 B.C.), the interment most likely dates to the Late Woodland period (A.D. 1000-1600). In a 1969 publication, the collectors concluded that this flexed burial is typical of Late Woodland period, rather than Late Archaic period, mortuary practices. Museum documentation indicates this interment was an intrusive Late Woodland burial in a Late Archaic site and was not associated with other Late Archaic features at Bear Swamp. Oral tradition and historical documentation indicate that Berkley, MA, is located within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Dartmouth, MA.

In 1922, human remains representing three individuals were removed from the Waldo Farm site, Dartmouth, Bristol County, MA, by an unknown collector and were donated to the Peabody Museum of Archaeology and Ethnology by John Lincoln Waldo in the same year. No known individuals were identified. No associated funerary objects are present.

In 1924, human remains representing 36 individuals were removed from the Waldo Farm and Cummings Farm sites, Dartmouth, Bristol County, MA, by H.L. Shapiro on behalf of the Peabody Museum of Archaeology and Ethnology. Museum documentation indicates that human remains representing 34 individuals were removed from the Waldo Farm site and human remains representing 2 individuals were removed from the nearby Cummings Farm site. No known individuals were identified. The two associated funerary objects are one container of fabric fragments and one wood fragment.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Historic/Contact period (post-A.D. 1500). According to historic sources and oral tradition, the Waldo Farm site is a known historic Christian Native American cemetery that most likely dates to the late 17th and early 18th centuries. The pattern of copper stains present on some of the human remains from both the Waldo Farm and Cummings Farm sites also suggests that the human remains were interred sometime after contact. Oral tradition and historical documentation indicate that Dartmouth, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1932, human remains representing 26 individuals were removed from a cemetery near the Waldo Farm site in Dartmouth, Bristol County, MA, by J.M. Andrews and C.W. Dupertuis. Messrs. Andrews and Dupertius donated human remains representing 25 individuals to the Peabody Museum of Archaeology and Ethnology in the same year, and donated human remains representing 1 individual to the Peabody Museum of Archaeology and Ethnology in 1937. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Historic/Contact period (post-A.D. 1500). The pattern of copper stains on some of the human remains from the site suggests that the human remains were interred some time after contact. Oral tradition and historical documentation indicate that Dartmouth, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1956, human remains representing two individuals that were removed from Dartmouth, Bristol County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA. The human remains were collected by Douglas S. Byers and Frederick Johnson, probably in 1955. No known individuals were identified. No associated funerary objects are present. According to museum documentation, objects associated with the burials that are not in the possession of the Peabody Museum of Archaeology and Ethnology include a whale bone spoon, a small obtuse-angle clay pipe, and a stone pestle. The whale bone spoon and the clay pipe are in the possession of the Robert S. Peabody Museum of Archaeology. The location of the stone pestle is unknown.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Historic/Contact period (post-A.D. 1500). Associated funerary objects that confirm a postcontact date are European-influenced spoons, as well as a ceramic pipe with bent stem, which is strongly identified in New England with the Late Woodland period and later (post-A.D. 1000). Oral tradition and historical documentation indicate that Dartmouth, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Westport Harbor, MA.

In 1924, human remains representing four individuals were removed from a gravel pit in Westport Harbor, Bristol County, MA, by H.L. Shapiro and were donated to the Peabody Museum of Archaeology and Ethnology by Mr. Wheeler of Westport Harbor in the same year. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Historic/Contact period (post-A.D. 1500). Copper stains on the human remains of one individual and erosion patterns on all of the human remains suggest that the individuals were likely buried in coffins, indicating that the individuals were interred sometime after contact. Oral tradition and historical documentation indicate that Westport Harbor, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

DUKES COUNTY, MA.

Chilmark, MA.

In 1912 and 1913, human remains representing 13 individuals were removed from Chilmark on Martha's Vineyard, Dukes County, MA, during a Peabody Museum of Archaeology and Ethnology expedition. Ten individuals were removed in 1912 and three individuals were removed in 1913. The 1912 and 1913 expeditions were led by S.J. Guernsey. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Historic/Contact period (post-A.D. 1500). According to the S.J. Guernsey, this area of Chilmark was a known historic Native American burial ground. The presence of wrought-iron nails in the immediate surroundings of the burials suggests a postcontact date. Oral tradition and historical documentation indicate that Chilmark, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1964, human remains representing one individual that were removed from the vicinity of Menemsha Pond in Chilmark on Martha's Vineyard, Dukes County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by the Thomas Cooke House and Museum of the Duke County Historical Society. The human remains were removed by an unknown workman around 1956. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that the individual is Native American. The interment most likely dates to the Historic/Contact period (post-A.D. 1500). According to S.J. Guernsey, who undertook excavations in the same area in the summers of 1912 and 1913, this area of Chilmark was a known historic Native American burial ground. Mr. Guernsey recovered wrought-iron nails in the vicinity of the burial, which suggests a postcontact date for the interment. Oral tradition and historical documentation indicate that Chilmark, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Edgartown, MA.

In 1946, human remains representing two individuals were removed from Edgartown on Martha's Vineyard, Dukes County, MA, by Burnham Litchfield, who donated the human remains to the Peabody Museum of Archaeology and Ethnology in the same year. No known individuals were identified. No associated funerary objects are present. According to museum documentation, glazed pottery that was possibly associated with the human remains is not in the possession of the Peabody Museum of Archaeology and Ethnology.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Historic/Contact period (post-A.D. 1500). In New England, glazed ceramics support a postcontact date. Oral tradition and historical documentation indicate that Edgartown, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Oak Bluffs, MA.

In 1916, human remains representing five individuals were removed from Woodsedge Farm in Oak Bluffs on Martha's Vineyard, Dukes County, MA, by men working in the area and were donated to the Peabody Museum of Archaeology and Ethnology by Susan J. Chase in the same year. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. Museum documentation indicates that the interments most likely date to the Historic/Contact period (post- A.D. 1500). The source states that the human remains are of ''modern Indians; not very old'' and are probably of Wampanoag Indians. Oral tradition and historical documentation indicate that Oak Bluffs, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

PLYMOUTH COUNTY, MA.

Bridgewater, MA.

In 1949, human remains representing 16 individuals were removed from the Titicut site in Bridgewater, Plymouth County, MA, by members of the Warren King Moorhead Chapter of the Massachusetts Archaeological Society and were donated to the Peabody Museum of Archaeology and Ethnology in the same year. No known individuals were identified. No associated funerary objects are present. According to museum documentation, associated funerary objects that are not in the possession of the Peabody Museum of Archaeology and Ethnology include several brass or copper pendants, bone beads, copper beads, and bark blanket fragments.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Historic/Contact period (post-A.D. 1500). Associated funerary objects that confirm a postcontact date include copper and brass implements,

and bark blanket fragments. Oral tradition and historical documentation indicate that Bridgewater, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1967, human remains representing 15 individuals were discovered by the Fernandez Construction Company in the vicinity of Atkinson Drive in Bridgewater, Plymouth County, MA, and were donated to the Peabody Museum of Archaeology and Ethnology by Dr. Peirce H. Leavitt, Plymouth County Medical Examiner, through Dr. Dena Dincauze, formerly of the Peabody Museum of Archaeology and Ethnology, in the same year. No known individuals were identified. The two associated funerary objects are one container with a shroud cloth and coffin fragments, and one container with coffin fragments, coffin nails, and soil.

Osteological characteristics indicate that the individuals are Native American. The site was explored by Dr. Dincauze, probably under the auspices of Plymouth County. At the time of excavation, Dr. Dincauze commented that the interments appeared to be those of Christian Indians and likely date to the 18th century. A postcontact date is confirmed by the presence of a shroud cloth, coffin fragments, and coffin nails. Oral tradition and historical documentation indicate that Bridgewater, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Hingham, MA.

In 1932, human remains representing eight individuals were removed from a construction site in Hingham, Plymouth County, MA, by an unknown collector and were donated to the Peabody Museum of Archaeology and Ethnology by Mayo Tolman in the same year. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that one individual is of mixed Native American and Caucasian ancestry and seven individuals are Native American. The interments most likely date to the Historic/Contact period (post-A.D. 1500). The pattern of copper stains on the human remains suggests that the human remains were interred some time after contact. Oral tradition and historical documentation indicate that Hingham, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Hull, MA.

In 1867, human remains representing three individuals that were removed from Atlantic Hill in Hull, Plymouth County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by Jefferies Wyman. The human remains were removed by Mr. Wyman at an unknown date. No known individuals were identified. The five associated funerary objects are four shell-tempered pottery sherds and one stone pestle.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Historic/Contact period (post-A.D. 1500). The pattern of copper stains on some of the human remains from the site indicates that they were interred some time after contact. Shell-tempered pottery in southern New England typically dates to the Late Woodland period and later (post-A.D. 1000). Oral tradition and historical documentation indicate that Hull, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1867, human remains representing one individual that were removed from Nantasket Beach in Hull, Plymouth County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by Jefferies Wyman. The human remains were collected by Mr. Wyman at an unknown date. No known individual was identified. The 16 associated funerary objects are shell-tempered pottery sherds.

Osteological characteristics indicate that the individual is Native American. The interment most likely dates to the Late Woodland period or later (post-A.D. 1000). Shell-tempered pottery in southern New England typically dates to the Late Woodland period and later (post-A.D. 1000). Oral tradition and historical documentation indicate that Hull, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Kingston, MA.

In 1881, human remains representing six individuals were removed from the Patuxet Hotel site in Kingston, Plymouth County, MA, by S.H. Keith and were donated to the Peabody Museum of Archaeology and Ethnology by Mr. Keith in the same year. No known individuals were identified. The 17 associated funerary objects are 1 container of human hair and cloth, 1 container of cloth fragments, 1 container of iron nails, 1 container of wood fragments, 1 container of iron knife fragments, 1 brass spoon, 2 kaolin clay pipes, 3 pieces of lead, 1 stone button mold, 3 lead buttons, and 2 flint flakes.

Osteological characteristics indicate that the individuals are Native American. Museum documentation indicates that the human remains were removed from an ''Indian burying ground.'' The interments mostly likely date to the Historic/Contact period (post-A.D. 1500). The pattern of copper stains on some of the human remains from the site indicates that they were interred some time after contact. Associated funerary objects, including iron nails, wood fragments (most likely coffin fragments), iron knife fragments, a brass spoon, kaolin clay pipes, pieces of lead, a button mold, buttons, and flint flakes (most likely for European-style firearms), also confirm a postcontact date. Oral tradition and historical documentation indicate that Kingston, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag

Nation (a nonfederally recognized Indian group).

Marion, MA.

In 1884, human remains representing nine individuals were recovered from the Mendell Farm site in Marion, Plymouth County, MA, during a Peabody Museum of Archaeology and Ethnology expedition led by C.A. Studley. No known individuals were identified. The one associated funerary object is a European kaolin pipe. According to museum documentation, coffin nails that are not in the possession of the Peabody Museum of Archaeology and Ethnology were found with the remains of several individuals at the site.

Osteological characteristics indicate that the individuals are Native American. Museum documentation indicates that Mendell Farm is a known Native American burial ground. The interment most likely dates to the Historic/Contact period (post-A.D. 1500). The style of the kaolin pipe found with some of the human remains from the site suggests European manufacture. The presence of coffin nails also confirms a postcontact date. Oral tradition and historical documentation indicate that Marion, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Marshfield, MA.

In 1923, human remains representing one individual were removed from Rexham Terrace in Marshfield, Plymouth County, MA, by Carleton S. Coon, who donated the human remains to the Peabody Museum of Archaeology and Ethnology in the same year. No known individual was identified. No associated funerary objects are present.

The interment most likely dates to the Historic/Contact period (post-A.D. 1500). An osteological examination of the human remains suggests that in terms of overall cranial morphology the human remains closely resemble mixed Native American and African American skeletal morphology, indicating a postcontact date (post-A.D. 1500). Oral tradition and historical documentation indicate that Marshfield, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1940, human remains representing one individual were removed from the South River sand pit in Marshfield, Plymouth County, MA, by Norman Merry, Arthur Chandler, and Superintendent Sherman of Game Farm. In the same year, the human remains were donated to Harvard University's Department of Legal Medicine, and then to the Peabody Museum of Archaeology and Ethnology. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that the individual is Native American. The interment most likely dates to the Historic/Contact period (post-A.D. 1500). The pattern of copper stains on the human remains indicates that the human remains were interred some time after contact. Oral tradition and historical documentation indicate that Marshfield, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Mattapoisett, MA.

In 1933, human remains representing one individual that were removed from the Herring Weir area of Mattapoisett, Plymouth County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by Raymond Baxter. The human remains were discovered by men working in the area in 1932. No known individual was identified. The 28 associated funerary objects are 18 fragments of a copper kettle, 2 copper sheet fragments, 5 fragments of iron implements, 1 container of red clay, 1 container of skin and bark, and 1 large fragment of a woven bag.

Osteological characteristics indicate that the individual is Native American. The interment most likely dates to the Historic/Contact period (post-A.D. 1500). Museum documentation suggests that the human remains were interred sometime during the Early Historic period, most likely around the mid-17th century. Associated funerary objects that confirm a postcontact date are copper kettle fragments, copper sheet fragments, iron implement fragments, and a woven bag fragment. Oral tradition and historical documentation indicate that Mattapoisett, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Middleboro, MA.

In 1957, human remains representing five individuals that were removed from the Taylor's Farm site in Middleboro, Plymouth County, MA, were collected by Maurice Robins and were donated to the Peabody Museum of Archaeology and Ethnology by the Massachusetts Archaeological Society in the same year. No known individuals were identified. No associated funerary objects are present.

In 1963, human remains representing four individuals that were removed from the Taylor's Farm site in Middleboro, Plymouth County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA, through Douglas S. Byers. The human remains were removed by the Middleboro Chapter of the Massachusetts Archaeological Society at an unknown date. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. Museum documentation and correspondence from Mr. Robins indicates that there was an old Indian church and burying ground in the vicinity of the Taylor's Farm site and that the human remains possibly represent those of Christian Indians. The interments most likely date to the Historic/Contact period (post-A.D. 1500). The pattern of copper stains on some of the human remains indicates that the human remains were interred some time after contact. Oral tradition and historical documentation indicate that Middleboro, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Norwell, MA.

In 1936, human remains representing one individual from Norwell, Plymouth County, MA, were discovered by Henry Pinson and were donated to the Peabody Museum of Archaeology and Ethnology by the Boston Society of Natural History, through C.V. MacCoy, in the same year. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that the individual is Native American. The interment most likely dates to the Historic/Contact period (post-A.D. 1500). The pattern of copper stains on the human remains indicates that the human remains were interred some time after contact. Oral tradition and historical documentation indicate that Norwell, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Plymouth, MA.

In 1885, human remains representing four individuals were removed from the Watson's Hill site in Plymouth, Plymouth County, MA, by F.N. Knapp, J.M. Cobb, and J.C. Kimball and were donated to the Peabody Museum of Archaeology and Ethnology by Mr. Cobb in the same year. No known individuals were identified. The two funerary objects are a chipped stone point and a piece of raw material, possibly ochre.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Late Woodland period or later (post-A.D. 1000). Oral tradition and historical documentation indicate that Watson's Hill, MA, is a known Late Woodland (A.D. 1000-1500) and Historic/Contact period (post-A.D. 1500) Wampanoag village that is located within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1963, human remains representing one individual that were removed from Nook Farm in Plymouth, Plymouth County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA. The human remains were removed by Douglas S. Byers and J. Brew in 1940. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that the individual is Native American. The interment most likely dates to the Historic/Contact period (post-A.D. 1500). Documentary evidence supplied by the Robert S. Peabody Museum of Archaeology indicates that Nook Farm is a known Contact period site (post-A.D. 1500). Oral tradition and historical documentation indicate that Plymouth, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

West Wareham, MA.

In 1947, human remains representing four individuals that were removed from a site known as Conant's Hill, Horseshoe Factory, or Lincoln Hill in West Wareham, Plymouth County, MA, were donated to the Peabody Museum of Archaeology and Ethnology by the Middleboro Chapter of the Massachusetts Archaeological Society. The human remains were collected by John Longyear III and Maurice Robins during excavations by the Massachusetts Archaeological Society prior to 1944. No known individuals were identified. No associated funerary objects are present. According to museum records, a lead ring that was found in association with human remains from the site is not in the possession of the Peabody Museum of Archaeology and Ethnology.

Osteological characteristics indicate that the individuals are Native American. The interments most likely date to the Historic/Contact period (post-A.D. 1500). The presence of the lead ring at the site confirms a postcontact date for the interments. Oral tradition and historical documentation indicate that Wareham, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of 238 individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 127 associated funerary objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, and there is a cultural relationship between the Native American human remains and associated funerary objects and Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group) and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Diana Loren, Acting Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495-4125, before September 15, 2003. Repatriation of the human remains and associated funerary objects to the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group) may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Wampanoag Repatriation Confederation, Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group) that this notice has been published.

Dated June 20, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03-20754 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001. The cultural items were removed from the Fort Hill site, South Orleans, Barnstable County, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 86 cultural items are 76 copper tubular beads; 1 bag of fragmentary leather, cordage, copper, and sand; and 9 brass sheet fragments.

The cultural items were collected from Fort Hill, South Orleans, Barnstable County, MA, on an unknown date before July 5, 1916, by George Ellis, who gave the cultural items to Theodore Eastman Jewett on an unknown date. In 1938, the 86 cultural items were donated to the Peabody Museum of Archaeology and Ethnology by Mrs. Henry H. Richardson, in memory of Mr. Jewett. Accession records indicate that the cultural items were found in a grave.

The interment most likely dates to the Historic/Contact period (post-A.D. 1500). The use of copper and textiles in burials suggests a date from the Historic/Contact period or later. Although native copper was used to make cold-hammered beads and ornaments prior to the arrival of Europeans, the beads from the Fort Hill site are typical of those made from traded copper kettles made of imported sheet copper or brass. The burial context indicates that the burial is of a Native American individual. Oral tradition and historical documentation indicate that South Orleans, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, the Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, and there is a cultural relationship between the unassociated funerary objects and the Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group) and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Diana Loren, Acting Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495-4125, before September 15, 2003. Repatriation of the unassociated funerary objects to the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group) may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Wampanoag Repatriation Confederation, Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group) that this notice has been published.

Dated: July 1, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–20757 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lake Curry Water Supply Project, Napa and Solano Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a joint environmental impact statement/ environmental impact report.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 as amended, the Bureau of Reclamation proposes to participate in a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) with the City of Vallejo on the City's Lake Curry Water Supply Project.

The Lake Curry Water Supply Project is being proposed by the City of Vallejo (City). The City is proposing to resume use of water from the City's Lake Curry for municipal and industrial uses within the City's service area, and is evaluating alternative delivery methods for conveying the water to the City's Fleming Hill Water Treatment Plant in Vallejo for delivery to the City's service area. The City will be the lead agency under the California Environmental Quality Act (CEQA).

DATES: Reclamation and the City will seek public input on alternatives, concerns, and issues to be addressed in the EIS/EIR through scoping meetings to be held as follows:

- Wednesday, September 10, at 7 p.m., Vallejo, CA
- Thursday, September 18, at 7 p.m., Suisun, CA

Written comments on the scope of alternatives and impacts should be submitted by September 15, 2003.

Reclamation estimates that the draft EIS/EIR will be available for public review near the end of 2003.

ADDRESSES: The meeting locations are:

- In Vallejo, CA—Joseph Room, Main Floor, John F. Kennedy Library, 505 Santa Clara Street

• In Suisun, CA—Suisun Fire Protection District's Valley Station, 4965 Clayton Valley Road

Written comments on the scope of alternatives and impacts to be considered should be sent to the Lake Curry Water Supply Project, c/o Ms. Pamela Sahin, Administrative Analyst II, City of Vallejo Utilities Department, Water Division, 202 Fleming Hill Road, Vallejo, CA 94589–2332. Comments may also be submitted via e-mail to Ms. Sahin at *waterinfo@ci.vallejo.ca.us.*

FOR FURTHER INFORMATION CONTACT: Mr. Rob Schroeder, Resource Manager, U.S. Department of the Interior, Bureau of Reclamation, Central California Area Office, 7794 Folsom Dam Road, Folsom, CA 95630–1799, Telephone number 916–989–7274. Comments may also be submitted via e-mail to Mr. Schroeder at *rschroeder@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: The City is proposing to execute and implement a contract with Reclamation to convey the water from Lake Curry through a portion of Reclamation's Putah South Canal to the Terminal Reservoir for delivery to the City.

Reclamation will consult with the National Marine Fisheries Service (NOAA Fisheries) and the U.S. Fish and Wildlife Service regarding potential effects of the action on species designated in accordance with the Federal Endangered Species Act (ESA).

The City was issued a Water Right Permit in 1922 and License 5728 in 1959 by the State for storing and using water in Lake Curry for municipal purposes. Lake Curry was an active and important part of the City's water supply system between 1926 and 1992. The City also served water for domestic and stock watering purposes in Gordon and Suisun Valleys along the existing 24-inch diameter Gordon Valley pipeline, which conveyed the water from Lake Curry to the City. The water was treated at a pressure filtration plant near Lake Curry prior to delivery to the City and to connections outside of the City's service area along the Gordon Valley pipeline.

In 1992, the City was compelled to cease delivering water from Lake Curry to domestic users because of stringent water treatment requirements adopted by the California Department of Health Services. Water from the Lake is currently being released to Suisun Creek at a rate of 2 cfs to 3 cfs.

The City has continued to serve the users in Gordon and Suisun Valleys by conveying water from its Green Valley water treatment and Lakes transmission system, using the existing 24-inch diameter Gordon Valley pipeline and a distribution main.

For several years, the City has pursued the right to use a portion of the Putah South Canal, a Federal facility owned and operated by Reclamation, to convey untreated Lake Curry water to the City's Fleming Hill Water Treatment Plant in Vallejo. In November 2000, Congress authorized Reclamation to enter into a contract to permit use of the lower section of the Solano Project Putah South Canal facilities for such purposes. For the City to use the Putah South Canal and Terminal Reservoir to deliver Lake Curry water to the City, it needs to enter such a contract with Reclamation.

The general purposes of the Lake Curry Water Supply Project are to:

• Resume the use of Lake Curry water supplies for municipal and industrial use in the City

• Manager water releases from Lake curry to restore and maintain a healthy ecosystem in Suisun Creek for steelhead trout populations located downstream of Lake Curry, to the extent required by law

• Continue to provide water service to Gordon and Suisun Valley customers

• Enable the City to convey water to the City's service area by using the available capacity in existing facilities (Putah South Canal) owned by Reclamation

Prior to 1992, the City relief on Lake Curry as an important component of the City's water supply. Since 1992, the City has had to rely solely on its other water supply sources to meet the City's needs and obligations. In addition to its Green Valley System (Lakes Madigan and Frey), the City also has an appropriative right in Barker Slough in the Sacramento-San Joaquin Delta, a contract for Solano Project water delivered through the North Bay Aqueduct. Serving water from Lake Curry is critical to the City in meeting its existing and future demands. Serving water from Lake Curry would also assist in enhancing the City's water supply reliability.

The City's Project

The Lake Curry Water Supply project, as currently envisioned, would consist of:

• The City using its existing 24-inch diameter Gordon Valley Pipeline to convey untreated water from Lake Curry south via gravity flow to the Putah South Canal. Water would then flow through the Canal to the Terminal Reservoir then through existing City infrastructure to the existing Fleming Hill Water Treatment Plant for treatment and distribution to the City's users in its service area.

• The City installing a new 6- to 8-inch diameter water distribution pipeline to convey treated water from the City's existing Green Valley Water Treatment Plant north to Gordon Valley customers and to a new 150,000 to 200,000 gallon storage tank. The tank would be used for storage of treated water. The new pipeline would be installed within the County road right-of-way or within the existing easement of the 24-inch diameter pipeline.

• The City releasing a portion of its untreated water supply from Lake Curry to Suisun Creek for protection and maintenance of endangered species and their habitat in the creek.

With implementation of the Project, the City would be required to:

• Execute and implement a long-term contract with Reclamation, pursuant to 43 U.S.C. section 523 (the Warren Act of 1911) for the conveyance of non-Federal project water from Lake Curry through a 5-mile long portion of the federally owned Putah South Canal ending at the Terminal Reservoir.

• Obtain an easement for the installation of new facilities within the existing Reclamation right-of-way (needed to deliver Lake Curry supplies into the Putah South Canal).

• Obtain easements and approvals/permits from Napa and Solano counties.

• Obtain a General Construction Storm Water Permit from the State Water Resources Control Board.

• Conduct a sanitary survey every 5 years of the Lake Curry watershed.

The EIS/EIR will consider a range of alternatives including a Creek Conveyance Alternative and a No Action alternative.

Creek Conveyance Alternative

The Creek Conveyance Alternative consists of the City releasing and conveying all untreated water from Lake Curry into and long Suisun Creek to the intersection of the Putah South Canal. The water would flow in a southerly direction in the open Suisun Creek channel approximately 7 miles to the Putah South Canal where it would be rediverted for delivery to Terminal Reservoir, then to the City's Fleming Hill Water Treatment Plant. With implementation of this alternative, the City would not use the existing 24-inch diameter pipeline to convey untreated Lake Curry water to Vallejo.

The Creek Conveyance Alternative could potentially increase the volume of Lake Curry water available for the protection of threatened steelhead in Suisun Creek. By conveying all untreated water from Lake Curry to the

Canal in the creek channel, the project would conjunctively use the City's water supply for endangered species and their habitat in the creek.

A new water diversion facility (consisting of a small diversion dam, a fish screen protection system, and a pump) would be constructed to redivert water from Suisun Creek to the Putah South Canal. The water would then flow in the Putah South Canal to the Terminal Reservoir, then through the City's existing water transmission facilities to the Fleming Hill Water Treatment Plant for treatment and distribution to the City's service area.

In addition, the Creek Conveyance Alternative includes the continued conveyance of treated water north from the City's existing service system (Green Valley Water Treatment Plant) to customers in Gordon Valley and to a new 150,000 to 200,000 gallon storage tank. The tank would be used for storage of treated water. Conveyance of the treated water could be achieved by three different methods. These three methods are described below as Options 1, 2, and 3.

Option 1: This treated water conveyance option includes the continued use of the City's existing 24-inch diameter distribution pipeline to convey treated water from the City's existing service system (Green Valley Water Treatment Plant) to customers in Gordon Valley and to the new water storage tank to be added.

Option 2: This treated water conveyance option includes installation of a 6- to 8-inch diameter pipeline to convey treated water from the City's Green Valley Water Treatment Plant to customers in Gordon Valley and to the new water storage tank. The new pipeline would be installed within the right-of-way of the existing 24-inch diameter pipeline.

Option 3: This treated water conveyance option includes installation of a 6- to 8-inch diameter pipeline to convey treated water from the City's existing service system (Green Valley Water Treatment Plant) to customers in Gordon Valley and to the new water storage tank. The new pipeline would be installed with the existing 24-inch diameter pipeline. The 24-inch diameter pipeline would no longer be used to convey water. Its sole purpose would be to protect the smaller water distribution pipeline that is installed within it.

With implementation of this Creek Conveyance Alternative, regardless of which option is selected, the City would also be required to do the following:

- Construct a new rediversion structure in Suisun Creek, and obtain approval from the State Water Resources Control Board (SWRCB).
- Execute and implement a long-term contract with Reclamation, pursuant to 43 U.S.C. Section 523 (the Warren Act of 1911) for the conveyance of non-Federal water from Lake Curry through a 5-mile long portion of the federally owned Putah South Canal ending at the Terminal Reservoir.
- Obtain an easement for the installation of new facilities within the existing Reclamation right-of-way (needed to pump Lake Curry supplies to the Putah South Canal).
- Obtained required easements and approvals/permits from Napa and Solano counties.
- Obtain a Section 1603 permit from the California Department of Fish and Game for streambed alterations required for installation of the rediversion facility.
- Obtain a General Construction Storm Water permit from the California State Water Resources Control Board.
- Obtain a Section 404 Permit from the U.S. Army Corps of Engineers.
- Obtain a Section 401 Water Quality Certification/Waiver from the California Regional Water Quality Control Board.
- Conduct a sanitary survey every 5 years of the Lake Curry watershed, and Wooden Valley Creek and all other creeks tributary to Suisun Creek above the point of rediversion.

In addition, with implementation of this alternative, regardless of which option is selected, the City may elect to do the following:

- File a Water Code Section 17017 Water Right Change petition with the SWRCB to provide for the use of the water for fishery and habitat use, and to enable the City to protect the water in the creek from the Gordon Valley Dam downstream to a new point of rediversion of Suisun Creek.

No Project Alternative

The No Project Alternative consists of the City continuing to release water from Lake Curry to Suisun Creek. The purposes of the release are three-fold: (1) To approximate the amount of water that was withdrawn from the lake for municipal and industrial uses prior to 1992, (2) to conserve cold water stored in the lake, and (3) to provide the downstream flood protection that was available from Lake Curry operation prior to 1992.

The No Project Alternative also includes continuation of the City's current operation of the existing 24-inch diameter Gordon Valley Pipeline. Treated water from the City's existing Green Valley Water Treatment Plant would be pumped north in the 24-inch diameter distribution pipeline to customers in Gordon Valley.

Scoping is an early and open process designed to determine the issues and alternatives to be addressed in the EIS/EIR. The following are issues that have been identified to date: Potential effects on steelhead trout populations; potential effects on wetland, upland, and aquatic habitats; potential effects on special-status vegetation and wildlife species; potential construction-related effects on Suisun Creek, along Gordon Valley Road, and natural habitats and residents (including water quality, noise, air quality, and transportation/traffic effects); and potential effects on cultural resources.

The draft EIS/EIR will focus on the impacts and benefits of implementing the various alternatives. It will contain an analysis of the physical, biological, social, and economic impacts arising from the alternatives. In addition, it will address the cumulative impacts of implementation of the alternatives in conjunction with other past, present, and reasonably foreseeable actions.

If special assistance is required at the scoping meetings, contact Mr. Robert Schroeder at Reclamation 916–989–7274. Please notify Mr. Schroeder as far in advance of the workshops as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 916–989–7275.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or business, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: July 7, 2003.

Frank Michny,

Regional Environmental Officer Mid-Pacific Region.

[FR Doc. 03–20708 Filed 8–13–03; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–24; Exemption Application No. D–11004]

Grant of Individual Exemptions; Deutsche Bank AG (DB), Located in Germany, with Affiliates in New York, New York and Other Locations; and JPMorgan Chase Bank, Located in New York, New York; (collectively, with their Affiliates, the Applicants)

AGENCY: Employee Benefits Security Administrator, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The applicant has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Bank AG (DB), Located in Germany, with Affiliates in New York, New York and Other Locations; and JPMorgan Chase Bank, Located in New York, New York; (collectively, with their Affiliates, the Applicants)

[Prohibited Transaction Exemption 2003–24; Exemption Application Nos. D–11004 and D–11106]

Exemption

Under the authority of section 408(a) of the Employees Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32,836, 32,847, August 10, 1990), the Department amends the following individual prohibited transaction exemptions (PTEs) and authorization made pursuant to PTE 96–62 (61 FR 39988, July 31, 1996—referred to herein as ''EXPRO''): PTE 2000–25 (65 FR 35129, June 1, 2000), issued to Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management, Inc., and PTE 2000–27, issued to the Chase Manhattan Bank (65 FR 35129, June 1, 2000), and Final Authorization Number (FAN) 2001–19E, issued to DB and its Affiliates (June 23, 2001).[1] Such PTEs and EXPRO authorization are hereby replaced by the following exemption.

Section I—Transactions

The restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the purchase of any securities by the Asset Manager (as defined in Section II(a)) on behalf of employee benefit plans (Client Plans), including Client Plans investing in a pooled fund (Pooled Fund), for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where the Affiliated Broker-Dealer is a manager or member of such syndicate (an ''affiliated underwriter transaction'' (AUT)), and/or where an Affiliated Trustee serves as trustee of a trust that issued the securities (whether or not debt securities) or serves as indenture trustee of securities that are debt securities (an ''affiliated trustee transaction'' (ATT)), provided that the following conditions are satisfied:

(a) The securities to be purchased are—

(1) either:

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*) or, if exempt from such registration requirement, are (A) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) issued by a bank, (C) exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or (D) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of that Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding 12 months; or

(ii) part of an issue that is an ''Eligible Rule 144A Offering,'' as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities, except that—

(i) If such securities are offered for subscription upon exercise of rights, they may be purchased on or before the

[1] *See* also PTE 2000–26 (65 FR 35129, June 1, 2000), issued to Goldman, Sachs & Co., and its Affiliates; PTE 2000–28, (65 FR 35129, June 1, 2000), issued to Citigroup, Inc. and its Affiliates; PTE 2000–29 (65 FR 35129, June 1, 2000), issued to Morgan Stanley Dean Witter & Co. and its Affiliates; FAN 2001–24E (October 6, 2001), issued to Barclays Global Investors N.A., Barclays Capital, Inc. and their Affiliates; and FAN 2002–09E (September 14, 2002), issued to The TCS Group, Inc., and its Affiliates. The Department will separately consider similar amendments to those exemptions and authorizations upon the receipt of applications or submissions relating thereto from such entities.

fourth day preceding the day on which the rights offering terminates; or

(ii) if such securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, provided that the interest rates on comparable debt securities offered to the public subsequent to the first day and prior to the purchase are less than the interest rate of the debt securities being purchased; and

(3) offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if—

(i) Such securities are purchased by others pursuant to a rights offering; or

(ii) such securities are offered pursuant to an over-allotment option.

(b) The issuer of such securities has been in continuous operation for not less than three years, including the operation of any predecessors, unless—

(1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.,* Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); or

(2) such securities are issued or fully guaranteed by a person described in paragraph (a)(1)(i)(A) of this exemption; or

(3) Such securities are fully guaranteed by a person who has issued securities described in (a)(1)(i)(B), (C), or (D), and who has been in continuous operation for not less than three years, including the operation of any predecessors.

(c) The amount of such securities to be purchased by the Asset Manager on behalf of a Client Plan does not exceed three percent of the total amount of the securities being offered. Notwithstanding the foregoing, the aggregate amount of any securities purchased with assets of all Client Plans (including Polled Funds) managed by the Asset Manager (or with respect to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c)) does not exceed:

(1) 10 percent of the total amount of any equity securities being offered;

(2) 35 percent of the total amount of any debt securities being offered that are rated in one of the four highest rating categories by at least one of the Rating Organizations; or

(3) 25 percent of the total amount of any debt securities being offered that are rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; and

(4) if purchased in an Eligible Rule 144A Offering, the total amount of the securities being offered for purposes of determining the percentages for (1)–(3) above is the total of:

(i) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) the principal amount of the offering of such class in any concurrent public offering.

(d) The consideration to be paid by the Client Plan in purchasing such securities does not exceed three percent of the fair market value of the total net assets of the Client Plan, as of the last day of the most recent fiscal quarter of the Client Plan prior to such transaction.

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.

(f) If the transaction is an AUT, the Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is based upon the amount of securities purchased by Client Plans pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designations generated by purchases of securities by the Asset Manager on behalf of its client Plans.

(g) If the transaction is an AUT,

(1) the amount the Affiliated Broker-Dealer receives in management, underwriting or other compensation is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those securities sold pursuant to this exemption. Except as described above, nothing in this paragraph shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other consideration that is not based upon the amount of securities purchased by the Asset Manager on behalf of Client Plans pursuant to this exemption; and

(2) the Affiliated Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section I, paragraphs (e), (f), or (g), of this exemption.

(h) In the case of a single Client Plan, the covered transaction is performed under a written authorization executed in advance by an independent fiduciary (Independent Fiduciary) of the Client Plan. In the case of a single Client Plan on behalf of which an Independent Fiduciary executed a written authorization in respect of AUTs, as required under another prohibited transaction exemption covering the same Asset Manager, prior to publication of this exemption in the **Federal Register**, the written authorization requirement of this paragraph (h) shall be deemed satisfied with respect to ATTs and AUTs if the Asset Manager provides to the same Independent Fiduciary the materials described in paragraph (i) below, together with a termination form expressly providing an election for the Independent Fiduciary to terminate the authorization with respect to AUTs or ATTs, or both, and a statement to the effect that the Asset Manager proposes to engage in ATTs on a specified date (that shall be not less than 45 days after the notice is sent to the Independent Fiduciary) unless the Independent Fiduciary signs and returns the termination form to the Asset Manager prior to such date.

(i) Prior to the execution of the written authorization described in paragraph (h) above, the following information and materials (which may be provided electronically) must be provided by the Asset Manager to the Independent Fiduciary of each single Client Plan:

(1) A copy of the notice of proposed exemption and of the final exemption as published in the **Federal Register**; and

(2) any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(j) Subsequent to an Independent Fiduciary's initial authorization permitting the Asset Manager to engage in the covered transactions on behalf of a single Client Plan, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the

covered transactions that the Independent Fiduciary requests.

(k) In the case of existing plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager has provided the written information described below to the Independent Fiduciary of each plan participating in the Pooled Fund. The following information and materials (which may be provided electronically shall be provided not less than 45 days prior to the Asset Manager's engaging in the covered transactions on behalf of the Pooled Fund pursuant to the exemption:

(1) A notice of the Pooled Fund's intent to purchase securities pursuant to this exemption and a copy of the notice of proposed exemption and of the final exemption as published in the **Federal Register**;

(2) any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and

(3) a termination form expressly provided an election for the Independent Fiduciary to terminate the plan's investment in the Pooled Fund without penalty to the plan. Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that the plan has an opportunity to withdraw its assets from the Pooled Fund for a period at least 30 days after the plan's receipt of the initial notice described in subparagraph (1) above and that the failure of the Independent Fiduciary to return the termination form by the specified date shall be deemed to be an approval by the plan of its participation in covered transactions as a Pooled Fund investor. Further, the instructions will identify the Asset Manager and its Affiliated Broker-Dealer and/or Affiliated Trustee and state that this exemption may be unavailable unless the Independent Fiduciary is, in fact, independent of those persons. Such fiduciary must advise the Asset Manager, in writing, if it is not an ''independent Fiduciary,'' as that term is defined in Section II(g) of this exemption.

For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof. However, in-house plans must notify the Asset Manager, as provided above.

(1) In the case of a plan whose assets are proposed to be invested in a Pooled Fund subsequent to implementation of the procedures to engage in the covered transactions, the plan's investment in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary, following the receipt by the Independent Fiduciary of the materials described in subparagraphs (1) and (2) of paragraph (k). For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof.

(m) Subsequent to an Independent Fiduciary's initial authorization of a plan's investment in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall:

(1) Furnish the Independent Fiduciary of each single Client Plan, and of each plan investing in a Pooled Fund, with a report (which may be provided electronically) disclosing all securities purchased on behalf of that Client Plan or Pooled Fund pursuant to the exemption during the period to which such report relates, and the terms of the transactions, including:

(i) The type of security (including the rating of any debt security);

(ii) the price at which the securities were purchased;

(iii) the first day on which any sale was made during this offering;

(iv) the size of the issue;

(v) the number of securities purchased by the Asset Manager for the specific Client Plan or Pooled Fund;

(vi) the identity of the underwriter from whom the securities were purchased;

(vii) in the case of an AUT, the spread on the underwriting;

(viii) in the case of an ATT, the basis upon which the Affiliated Trustee is compensated;

(ix) the price at which any such securities purchased during the period were sold; and

(x) the market value at the end of such period of each security purchased during the period and not sold;

(2) provide to the Independent Fiduciary in the quarterly report (i) in the case of AUTs, a representation that the Asset Manager has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described in paragraph (g)(2), affirming that, as to each AUT covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section I, paragraphs (e), (f), and (g) of this exemption, and that copies of such certifications will be provided to the Independent Fiduciary upon request, and (ii) in the case of ATTs, a representation of the Asset Manager affirming that, as to each ATT, the transaction was not part of an agreement, arrangement or understanding designed to benefit the Affiliated Trustee;

(3) disclose to the Independent Fiduciary that, upon request, any other reasonably available information regarding the covered transaction that the Independent Fiduciary requests will be provided, including, but not limited to:

(i) The date on which the security were purchased on behalf of the plan;

(ii) the percentage of the offering purchased on behalf of all Client Plans and Pooled Funds; and

(iii) the identify of all members of the underwriting syndicate;

(4) disclose to the Independent Fiduciary in the quarterly report, any instance during the past quarter where the Asset Manager was precluded for any period of time from selling a security purchased under this exemption in that quarter because of its status as an affiliate of the Affiliated Broker-Dealer or of an Affiliated Trustee and the reason for this restriction;

(5) provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a single Client Plan, that the authorization to engage in the covered transaction may be terminated, without penalty, by the Independent Fiduciary on more than five days' notice by contacting an identified person; and

(6) provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a Client Plan invested in a Pooled Fund, that the Independent Fiduciary may terminate investment in the Pooled Fund, without penalty, by contacting an identified person.

(o) Each single Client Plan shall have total net assets with a value of at least $50 million. In addition, in the case of a transaction involving an Eligible Rule 144A Offering on behalf of a single Client Plan, each such Client Plan shall have at least $100 million in securities, as determined pursuant to SEC Rule 144A (17 CFR 230.144A).[2] In the case of

[2] SEC Rule 10f–3(a)(4), 17 CFR 270.10f–3(a)(4), states that the term ''Eligible Rule 144A Offering'' means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(d)], rule 144A thereunder 230.144A of this chapter], or

Continued

a Pooled Fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund as held by plans having total net assets with a value of at least $50 million, or if each such Client Plan in the Pooled Fund has total assets of at least $50 million. For purchases involving an Eligible Rule 144A Offering on behalf of a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets, or if each such Client Plan in the Pooled fund has total assets of at least $100 million, and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net assets tests described above, where a group of Client Plans is maintained by a single employer or controlled groups of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement or the $100 million net asset requirement may be met by aggregating the assets of such Client Plans, if the assets are pooled for investment purposes in a single master trust.

(p) The Asset Manager qualifies as a ''qualified professional asset manager'' (QPAM), as that term is defined under Part V(a) of Prohibited Transaction Exemption 84–14 (49 FR 9494, 9506, March 13, 1984) and, in addition, has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

(q) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of employee benefit plans maintained by the Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee or an affiliate thereof for their own employees, for which the Asset Manager, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The Asset Manager, and the Affiliated Broker-Dealer, as applicable, maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (s) of this exemption to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Client Plan, other than the Asset Manager and the Affiliated Broker-Dealer or Affiliated Trustee, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph (s); and

(2) this record-keeping condition shall not be deemed to have been violated if, due to circumstances beyond the control of the Asset Manager or the Affiliated Broker-Dealer, or Affiliated Trustee, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(s) (1) Except as provided in subparagraph (2) of this paragraph (s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) are unconditionally available at their customary location for examination during normal business hours by)—

(1) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) any fiduciary of a Client Plan, or any duly authorized employee or representative of such fiduciary; or

(iii) any employer of participants and beneficiaries and any employee organizations whose members are covered by a Client Plan, or any authorized employee or representative of these entities; or

(iv) any participant or beneficiary of a Client Plan, or duly authorized employee or representative of such participant or beneficiary;

(2) none of the persons described in paragraphs (s)(1)(ii)–(iv) shall be authorized to examine trade secrets of the Asset Manager or the Affiliated Broker-Dealer or the Affiliated Trustee, or commercial or financial information which is privileged or confidential; and

(3) should the Asset Manager or the Affiliated Broker-Dealer or the Affiliated Trustee refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (s)(2) above, the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

(t) An indenture trustee whose affiliate has, within the prior 12 months, underwritten any securities for an obligor of the indenture securities will resign as indenture trustee if a default occurs upon the indenture securities.

Section II—Definitions

(a) The term ''Asset Manager'' means any asset management affiliate of the Applicants (as ''affiliate'' is defined in paragraph (c)) that meets the requirements of this exemption.

(b) The term ''Affiliated Broker-Dealer'' means any broker-dealer affiliate of the Applicants (as ''affiliate'' is defined in paragraph (c)) that meets the requirements of this exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term ''manager'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered, or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and

(3) any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term ''Client Plan'' means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets under the management of the Asset Manager, including a plan investing in a Pooled Fund (as ''Pooled Fund'' is defined in paragraph (f) below).

(f) The term ''Pooled Fund'' means a common or collective trust fund or pooled investment fund maintained by the Asset Manager.

(g)(1) The term ''Independent Fiduciary'' means fiduciary of a Client Plan who is unrelated to, and independent of, the Asset Manager, the Affiliated Broker-Dealer and the Affiliated Trustee. For purposes of this exemption, a Client Plan fiduciary will

rules 501–508 thereunder [§§ 230.501–230–508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

be deemed to be unrelated to, and independent of, the Asset Manager, the Affiliated Broker-Dealer and the Affiliated Trustee if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee and represents that such fiduciary shall advise the Asset Manager if those facts change.

(2) Notwithstanding anything to the contrary in this Section II(g), a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee;

(ii) such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee for his or her own personal account in connection with any transaction described in this exemption;

(iii) any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Client Plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Client Plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section II(g)(2)(iii) shall not apply.

(3) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(4) In the case of existing Client Plans in a Pooled Fund, at the time the Asset Manager provides such Client Plans with initial notice pursuant to this exemption, the Asset Manager will notify the fiduciaries of such Client Plans that they must advise the Asset Manager, in writing, if they are not independent, within the meaning of this Section II(g).

(h) The term ''security'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36) (1996)). For purposes of this exemption, mortgage-backed or other asset-baked securities rated by a Rating Organization will be treated as debt securities.

(i) The term ''Eligible Rule 144A Offering'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) under the 1940 Act.

(j) The term ''qualified institutional buyer'' or ''QIB'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(k) The term ''Rating Organizations'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.

(l) The term ''Affiliated Trustee'' means the Applicants and any bank or trust company affiliate of the Applicants (as ''affiliate'' is defined in paragraph (c)(1)) that serves as trustee of a trust that issues securities which are asset-backed securities or as indenture trustee of securities which are either asset-backed securities or other debt securities that meet the requirements of this exemption. For purposes of this exemption, other than Section I (t), performing services as custodian, paying agent, registrar or in similar ministerial capacities is also considered serving as trustee or indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, interested persons should refer to the notice of proposed exemption published on May 22, 2003 at 68 FR 28018.

Written Comments: The only comments received by the Department with respect to the notice of proposed exemption (the Notice) were submitted by the Applicants.

With respect to section I(h), JP Morgan Chase Bank commented that pursuant to the prior exemptions that are being amended herein (*i.e.,* PTE 2000–25 and PTE 2000–27), it had previously solicited written authorization to engage in AUTs from many of its Client Plans. Because the transactions provided for in the Notice are substantially similar to those for which JP Morgan Chase Bank has already given notice and obtained written consent, because the seeking of written consent is costly and time-consuming, and because, in the Applicants' view, the fact that the trustee is affiliated with the Asset Manager (*i.e.,* an ATT) is of far less consequence than where an Affiliate is a manager of the underwriting syndicate (*i.e.,* an AUT), the Applicants have requested that where they already have the written consent of a Client Plan for AUTs, they need only provide written notice and a termination form, terminating authorization for the additional ATT relief. The Department has accepted this comment [3] and has modified section I(h) of this exemption accordingly.

In addition, the Applicants requested a clarification with respect to section I(o) of the Notice. Section I(o) of the Notice requires, in pertinent part, that each single Client Plan shall have total net assets with a value of at least $50 million. In the case of a Pooled Fund, such $50 million requirement will be deemed met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets with a value of at least $50 million. The Applicants commented that the ''$50/$100 million'' test of that section seems to contemplate ''Pooled Funds'' composed mostly or entirely of investments by plans. However, the Applicant state that this is not always the case with their Pooled Funds. The Applicants represent that they and many managers advise or manage commingled vehicles which have sufficient investments from plans (25% or more) for the vehicle to be a ''look-through vehicle'' under the Plan Asset Regulations,[4] but also have more than 50% of their investments from non-plan investors. The Applicants note that it is possible to read the $50/$100 million test as causing the exemptions proposed in the Notice to be unavailable to a Pooled Fund where, for example, 49% of investments are from plans which are $50/$100 million in size, and 51% of investments are from non-plans which are $50/$100 million in size.

The Applicants request that the Department clarify that the exemptions, as amended herein, will apply to activity by Pooled Funds if each plan in the Pooled Fund meets the general requirement of $50/$100 million, even if

[3] The Department encourages all appropriate Client Plan fiduciaries to review the disclosures required herein and take whatever actions are necessary to protect the interests of the Client Plan's participants and beneficiaries. In addition, the Department notes that Client Plan fiduciaries should assess, in a timely fashion, their ability to monitor and subject transactions and determine whether the conditions described herein are satisfied.

[4] *See* the Department's regulation at 29 CFR part 2510.3–101, Definition of ''plan assets''—plan investments.

the Pooled Fund itself technically cannot satisfy the requirement that at least 50% of the units of beneficial interest in the Pooled Fund be held by plans having total net assets with a value of at least $50 million.

The Department accepts this comment and has modified the language of section I(o) of the exemption to clarify that the requirements therein are satisfied if each plan in the Pooled Fund meets the general requirement of $50/$100 million, even though 50 percent or more of the units of beneficial interest in such Pooled Fund are not held by plans.

Accordingly, in consideration of the entire record, including the comments submitted by the Applicants, the Department has determined to grant the exemption as proposed, with the modifications and clarifications described herein.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202 693–8546. (This is not a total-free number).

IBEW Local No. 1 Health and Welfare Fund (the Welfare Fund) and IBEW Local No. 1 Apprenticeship and Training Fund (the Training Fund; collectively, the Funds) Located in St. Louis, MO

[Prohibited Transaction Exemption 2003–25; Exemption Application Nos. L–11155 and L–11156, respectively]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the lease of certain classroom space and supplemental facilities (the Lease) by the Welfare Fund to the Training Fund.

The exemption is subject to the following conditions:

(1) The terms of the Lease are at least favorable to the Welfare Fund and the Training Fund as those obtainable in an arm's length transaction with an unrelated party.

(2) Qualified, independent appraisers have determined the initial amount of the Lease payments.

(3) A qualified, independent fiduciary, The Philip Company, has approved the Lease and has agreed to monitor the terms of the exemption, at all times, on behalf of the Welfare Fund.

(4) The independent fiduciary agrees to take whatever actions are necessary and proper to enforce the Welfare Fund's rights under the Lease and to protect the participants and beneficiaries of the Welfare Fund.

(5) The rental payments under the Lease are adjusted once every five years by the independent fiduciary to ensure that such Lease payments are not greater than or less than the fair market rental value of the leased space.

(6) The fair market rental amount for the leased space, at no time, will exceed 25 percent of the assets of either Fund, including any improvements that are constructed thereon.

(7) The independent fiduciary and the Board of Trustees of the Welfare Fund have determined that the Lease is an appropriate investment for the Welfare Fund and is in the best interest of the Welfare Fund's participants and beneficiaries.

(8) The Board of Trustees of the Training Fund has determined that the Lease transaction is an appropriate investment for the Training Fund and is in the best interest of the Training Fund's participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 22, 2003 at 68 FR 28026.

FOR FURTHER INFORMATION CONTACT: Ms. Silvia M. Quezada of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of August 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–20765 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.C.) (Increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

Negative Determinations for Worker Adjustment Assistance

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–51,945; State of Alaska Commercial Fisheries Entry Commission Permit #S)4K61830V, Kodiak, AK

TA–W–51,949; Peerless Corp., div. of Advanced Cast Products, Ironton, OH

TA–W–52,094; Anemostat, Inc., Scranton, PA

TA–W–52,177; Redman Knitting, Inc., Ridgewood, NY

TA–W–52,220; NMC Finishing, Inc., Nickell Moulding Co., Inc., Malvern, AR

TA–W–52,221; Motorola, Inc., Semiconductor Products Sector, MOS 5, Mesa, AZ

TA–W–52,251; Waukesha Cherry-Burrell, Delavan, WI

TA–W–52,264; Springs Industries, Inc., Lyman Printing and Finishing Plant, Lyman, SC

TA–W–52,386; Fishing Vessel (F/V) Family Pride, Kodiak, AK

TA–W–52,387; Fishing Vessel (F/V) Viking, Cordova, AK

TA–W–52,143; Larimer and Norton, Inc., Galeton, PA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–52,217; Modular Mining Systems, Inc., Tucson, AZ

TA–W–52,222; O'Neill and Sons, Inc., Tumwater, WA

TA–W–52,223; O'Neill Transportation, LLC, Tumwater, WA

TA–W–52,320; Computer Sciences Corporation (CSC), Newark, DE

TA–W–52,325; Stream International, Inc., Beaverton, OR

TA–W–52,329; ASML, Austin, TX

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–52,019; Actronix, Inc., Flippin, AR

The investigation revealed that criteria (a)(2)(A) (I.B) (Sales or production, or both, did not decline) and (a)(2)(B) (II.B) (has shifted production to country not under the free trade agreement with U.S) have not been met.

TA–W–51,952; Fishing Vessel (F/V) MS. Ingrid, Sand Point, AK

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–52,060; Amital Spinning Corp., New Bern, NC: June 17, 2002.

TA–W–51,699; Meadwestvaco, Consumer Packaging Div., Cleveland, TN: May 7, 2002.

TA–W–51,773; Regal Ware, Inc., Kewaskum, WI and West Bend, WI: April 30, 2002.

TA–W–51,852; Unifi, Inc., Nylon Div., Plant #3, Madison, NC, A; Dyed Div., Plant #4, Reidsville, NC, B; Dyed Div., Plant #15, Mayodan, NC, C; Nyloh Div., Plant #7, Madison, NC, D; Corporate Office, Greensboro, NC, E; Nylon Div., Plant #1, Madison, NC, F; Nylon Div., Plant #5, Madison, NC, G; Dyed Div., Plant #2, Reidsville, NC, H; Unifi/Sans, Spinning Div., Stoneville, NC, I; Polyester Div., Plant #22, Stauton, VA, J; Polyester Div., Plant T1, Yadkinville, NC, K; Polyester Div., Plant T2, Yadkinville, NC, L; Polyester Div., Plant T4, Yadkinville, NC, M; Polyester Div., Plant T5, Yadkinville, NC, N; Spinning Div., Plant F1, Yadkinville, NC, O; Dyed Div., Altamahaw, NC, P; Central Distribution Center, Madison, NC, Q; Warehouse 1 and 2, Yadkinville, NC, R; Transportation, Yadkinville, NC and S; Warehouse, Fort Payne, AL: May 15, 2002.

TA–W–52,044; Spectrum Dyed Yarns, Inc., Kings Mountain, NC: June 12, 2002.

TA–W–52,077; H and H Sewing, Blaine, MN: June 1, 2002.

TA–W–52,090; Conn-Selmer, Inc., Vincent Bach Plant, Elkhart, IN: June 18, 2002.

TA–W–52,113; Georgetown Steel Co., LLC, Georgetown, SC: June 20, 2002.

TA–W–52,132; Pennsylvania House, Inc., Monroe, NC: June 23, 2002.

TA–W–52,157; Trombetta, LLC, Menomonee Falls, WI: June 25, 2002.

TA–W–52,189; Oplink Communications, San Jose, CA: June 18, 2002.

TA–W–52,191; Image Metal Works, Inc., Milton Freewater, OR: June 30, 2002.

TA–W–52,203; Dresser, Inc., Berea, KY: July 1, 2002.

TA–W–52,230; Faribault Woolen Mill Co., Faribault, MN: June 2, 2002.

TA–W–52,281; Tiffany Industries LLC, Conway, AR: July 9, 2002.

TA–W–52,294; Richardson Brothers Furniture Co., a div. of Richardson Brothers Co., Sheboygan Falls, WI: July 9, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–52,196; Humboldt Hermetic Motor Corp., Humboldt, TN: June 25, 2002.

TA–W–52,167; General Mills, Inc., Bakeries and Foodservice Div., Formerly The Pillsbury Co., Hazelwood, MO: June 21, 2002.

TA–W–52,134; Trico Products Corp., Buffalo Plant, Buffalo, NY: June 12, 2002.

TA–W–52,248; Fibergrate Composite Structures, Inc., a div. of RPM International, Inc., including leased workers of Snelling Personnel Services and Staffmark, Piney Flats, TN: July 1, 2002.

TA–W–52,288; Pliana, Inc., Charlotte, NC: June 30, 2002.

TA–W–52,098; Fishing Vessel (F/V) Secure, Bow, WA: June 19, 2002.

TA–W–52,279; Jacuzzi Bros., div. of Jacuzzi, Inc., subsidiary of Jacuzzi Brands, Inc., Little Rock, AR: June 11, 2002.

TA–W–52,272; Cooper Bussman, Electrical Products Div., including leased workers of Adecco Personnel a subsidiary of Cooper Industries, Black Mountain, NC: June 17, 2002.

I hereby certify that the aforementioned determinations were issued during the months of July 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 1, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–20727 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,311]

Ceodeux, Inc., Mt. Pleasant, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 15, 2003, in response to a worker petition filed by a company official on behalf of workers at Ceodeux, Inc., Mt. Pleasant, Pennsylvania.

The subject worker group is covered by a petition filed on July 2, 2003 that is the subject of an ongoing investigation for which a determination has not yet been issued (TA–W–52,312). Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 4th day of August, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20725 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,350]

Fisher Controls International, LLC, Valve Division, Sherman, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 21, 2003, in response to a petition filed by a company official on behalf of workers at Fisher Controls International, LLC, Valve Division, Sherman, Texas.

The company official has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation under this petition has been terminated.

Signed at Washington, DC, this 4th day of August 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20722 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,422]

Fishing Vessel (F/V) Loon, Point Baker, AK; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 30, 2003, in response to a petition filed by a company official on behalf of workers of F/V Loon, Point Baker, Alaska.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 4th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20719 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,391]

General Electric Company, Industrial Systems Division, Mebane, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 25, 2003 in response to a worker petition filed on behalf of workers at General Electric Company, Industrial Systems Division, Mebane, North Carolina.

The petitioning group of workers is covered by an active certification issued on July 17, 2003 and which remains in effect (TA–W–52,163). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20721 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.C.) (Increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–51,669; The Premcor Refining Group, Inc., a subsidiary of Premcor USA, Hartford, IL

TA–W–51,894; Baldwin Kansa Corp., a wholly owned subsidiary of Baldwin Technology Co., Inc., Emporia, KS

TA–W–51,973; Briggs & Stratton Corp., Die Cast Components Div., Wauwatosa, WI

TA–W–52,043; Congoleum Corp., Mercerville, NJ

TA–W–52,096; Archer Daniels Midland Co., Soybean Div., Fredonia, KS

TA–W–51,682; Little Tikes Commercial Play Systems, a div. of Newell Rubbermaid, Farmington, MO

TA–W–52,055; Advanced Machining, Inc., Newberg, OR

TA–W–52,101; Pearl Baths, Inc., a div. of Maax, Inc., Brooklyn Park, MN

TA–W–52,161; Progressive Screen Engraving, Inc., North Carolina Div., Wadesboro, NC

TA–W–51,983; Smurfit-Stone Container Corp., East Location (7350 Stiles Road), El Paso, TX and West Location (6968 Industrial Ave.), El Paso, TX

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–52,018; ICT Group, Inc., Lewiston, ME

TA–W–52,022, A &B; Nortel Networks Corp., Optical Global Technical Assistance Center, Research Triangle Park, NC, Pittsburgh, PA and Centennial, CO

TA–W–52,285; Kinko's, Inc., Mission, KS

TA–W–52,273; Rapidigm, Inc., Pittsburgh, PA

TA–W–52,256; Telco Systems, Inc., a subsidiary of BATM Advanced Communications, Ltd., Foxboro, MA

TA–W–52,246; U.S. Data Source, LLC, Rancho Cucamongo, CA

TA–W–52,181; Electrical Wholesalers, Inc., Sumter, SC

TA–W–52,188; Hewlett Packard, HP Services Americas, former Compaq Computer Corp., Cypress, TX

TA–W–52,290; ACE Supply, Inc., Richmond, IN

TA–W–52,330; Computer Sciences Corp., Dallas, TX

The investigation revealed that criteria (a)(2)(A)(I.A) (no employment declines) have not been met.

TA–W–52,067; Pall Corp., Life Sciences Group, Capsule Department, Ann Arbor, MI

The investigation revealed that criteria (a)(2)(A) (I.C) (Increased imports) and (a)(2)(B) (II.C) (has shifted production to a foreign country) have not been met.

TA–W–51,705; Utica Cutlery Co., Utica, NY

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–51,905; Roane Hosiery, Inc., Harriman, TN: May 22, 2002.

TA–W–51,946; Towle Manufacturing Co., North Dighton, MA: June 2, 2002.
TA–W–52,017; Bush Industries, Inc., St. Paul, VA: June 1, 2002.
TA–W–52,023; Trevorton Manufacturing, Inc., Trevorton, PA: June 2, 2002.
TA–W–52,168; TRW Automotive, Occupant Safety Div., Propellant Manufacturing Group, Queen Creek, AZ: June 25, 2002.
TA–W–52,058; Smith Enterprises, Inc., a wholly owned subsidiary of S.E.I., Inc., including leased workers of Elite Resources, Rock Hill, SC: June 13, 2002.
TA–W–52,024; Stitches, Inc., Sunbury, PA: June 2, 2002.
TA–W–52,027; ADC Telecommunications, Inc., Plastic Injection Molding, New Hope, MN: May 13, 2002.
TA–W–52,200; Lea Industries, a div. of LADD Furniture, a subsidiary of La-Z–Boy, Inc., including leased workers of Atwork Personnel Services, Morristown, TN: June 27, 2002.
TA–W–52,228; Harbison-Walker Refractories Co., a subsidiary of Global Industrial Technologies, Inc., Ludington, MI: July 3, 2002.
TA–W–52,249; Paul Schurman Machine, Inc., Ridgefield, WA: July 7, 2002.
TA–W–52,347; Astaros LLC., Dry Valley Mine, Soda Springs, ID: July 15, 2002.
TA–W–52,268; California Cedar Products Co., McCloud, CA
TA–W–52,245; Thomasville Furniture Industries, Inc., Plant H Manufacturing Facility, Winston-Salem, NC: July 3, 2002.
TA–W–52,232; Schas Industries LLC, a subsidiary of Bacou-Dalloz, Wilkesboro, NC: June 27, 2002.
TA–W–52,120; Maine Machine Products Co., South Paris, ME: June 20, 2002.
TA–W–52,118; ORC Plastics, Rostone Facility, a div. of Reunion Industries, Inc., Lafayette, IN: June 20, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–52,104; Sanmina—SCI Corp., including leased workers of Adecco and Manpower, Augusta, ME: June 19, 2002.
TA–W–52,119; Tweco Products, Inc., a subsidiary of Thermadyne Holdings Corp., Wichita, KS: June 23, 2002.
TA–W–52,141; Broyhill Furniture Industries, Inc., Marion Facility, a wholly owned subsidiary of Furniture Brands International, Inc., Marion, NC: June 15, 2002.
TA–W–52,152; Multilayer Technology (Multek), Inc., a div. of Flextronics International, Roseville, MN: June 25, 2002.
TA–W–52,184; Fishing Vessel (F/V) Partisan, Sitka, AK: June 16, 2002.
TA–W–52,227; Vestshell Vermont, Inc., St. Albans, VT: July 3, 2002.
TA–W–52,271; Kerr-McGee Chemical, LLC, Chemical Div. Mobile Facility, Theodore, AL: June 27, 2002.
TA–W–52,298; Harriet and Henderson Yarns, Inc., Harriet #2 Plant, Henderson, NC: July 11, 2002.
TA–W–52,343; First Technology, Control Devices Div., Standish, ME: July 16, 2002.
TA–W–52,365; Teleflex Automotive, Inc., Van Wert, OH: July 21, 2002.
TA–W–51,911; Telephone Services, Inc., of Florida, a subsidiary of Emerson, Riverview, FL: May 16, 2002.
TA–W–51,923; Sanmina-SCI, Electronics Manufacturing Services Div., Lynchburg, VA: May 19, 2002.
TA–W–52,172 &A; Garan Manufacturing, Marksville, LA and Starkville, MS: June 27, 2002.
TA–W–52,178; Adobe Air, Inc., including leased workers of First Employment Services, Inc., Phoenix, AZ: June 24, 2002.
TA–W–52,199; Cirrus Logic, Austin, TX: June 27, 2002.
TA–W–52,204; Ericsson, Inc., Supply and Distribution Div., including leased workers of Manpower, Lynchburg, VA: June 27, 2002.
TA–W–52,208; Neuville Industries, Inc., Athens Div., Athens, TN: July 1, 2002.
TA–W–52,236; International Wire Group, Inc., a wholly owned subsidiary of Wire Technologies, Inc., Insulated Wire Div., Kendallville, IN: July 2, 2002.
TA–W–52,250; Hi-Tech Plastics, Inc., Cambridge, MD: June 27, 2002.
TA–W–52,266; Dana Corp., Hose and Tubing Products Div., including leased workers of Manpower, Crenshaw, MS: June 25, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–51,950; Shipley Company, LLC, a subsidiary of Rohm and Haas, Moss Point, MS: May 21, 2002.
TA–W–52,303; The Dow Chemical Co., Cal/Mag Products, Ludington, MI: July 7, 2002.

I hereby certify that the aforementioned determinations were issued during the months of July 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 28, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–20728 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,402]

Sanmina-SCI Corporation, Westbrook, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 25, 2003 in response to a petition filed by a company official on behalf of workers at Sanmina-SCI Corporation, Westbrook, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 4th day of August, 2003

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20720 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,323]

Stanek Tool Corporation, New Berlin, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 16, 2003, in response to a petition filed by a company official on behalf of workers at Stanek Tool Corporation, New Berlin, Wisconsin.

The company official has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation under this petition has been terminated.

Signed at Washington, DC, this 29th day of July 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20724 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,310]

Stopfill, Inc., Mt. Pleasant, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 15, 2003, in response to a worker petition filed by a company official on behalf of workers at Stopfill, Inc., Mt. Pleasant, Pennsylvania.

The subject worker group is covered by a petition filed on July 2, 2003 that is the subject of an ongoing investigation for which a determination has not yet been issued (TA–W–52,312). Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 4th day of August 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20726 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,338]

Takata Petri, Inc., Plants 2 & 3, Port Huron, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 17, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Takata Petri, Inc., Plants 2 & 3, Port Huron, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 4th day of August 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20723 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 25, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 25, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 28th day of July, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 07/21/2003 and 07/25/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,349	Terry Apparel (AR)	Marianna, AR	07/21/2003	07/18/2003
52,350	Fisher Controls International, LLC (Comp)	Sherman, TX	07/21/2003	07/18/2003
52,351	Waterbury Companies, Inc. (Comp)	Randolph, VT	07/21/2003	07/18/2003
52,352	Computer Sciences Corp. (TX)	Austin, TX	07/21/2003	07/18/2003
52,353	Nevamar Company, LLC (Comp)	Waverly, VA	07/21/2003	07/18/2003
52,354	Molex Fiber Optics (Comp)	Downers Grove, IL	07/21/2003	07/21/2003
52,355	Honeywell, Inc. (Wkrs)	Cupertino, CA	07/21/2003	07/10/2003
52,356	Jo-Bo, Inc. (Comp)	Georgetown, SC	07/21/2003	06/30/2003
52,357	Motorola (Wkrs)	Libertyville, IL	07/21/2003	06/30/2003
52,358	JDS Uniphase (Wkrs)	Rochester, MN	07/21/2003	07/21/2003
52,359	Swag-Nit, Inc. (Comp)	Mt. Holly, NC	07/21/2003	06/23/2003
52,360	Coats North America (Comp)	Rosman, NC	07/21/2003	07/18/2003
52,361	EXFO Burleigh Products Group, Inc. (Comp)	Victor, NY	07/21/2003	07/10/2003
52,362	Cookson Electronics (NJ)	Jersey City, NJ	07/21/2003	07/18/2003
52,363	FSI International (Wkrs)	Allen, TX	07/21/2003	07/18/2003
52,364	Meridian Beartrack Company (Comp)	Salmon, ID	07/22/2003	07/21/2003
52,365	Teleflex Automotive, Inc. (Wkrs)	Van Wert, OH	07/22/2003	07/21/2003
52,366	Marge Carson (CA)	Rosemead, CA	07/22/2003	07/21/2003
52,367	Honeywell (Wkrs)	Millinocket, ME	07/22/2003	07/21/2003
52,368	Fasco Motors (Comp)	Hillsdale, MI	07/22/2003	07/16/2003

APPENDIX—Continued

[Petitions Instituted Between 07/21/2003 and 07/25/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,369	Hopper Radio (Wkrs)	Weston, FL	07/22/2003	07/10/2003
52,370	Thomson Crown Wood Products (Comp)	Mocksville, NC	07/22/2003	07/14/2003
52,371	Thomasville Furniture Industries (Wkrs)	Hickory, NC	07/22/2003	07/21/2003
52,372	Code Alarm/Code Systems (MI)	Troy, MI	07/22/2003	07/21/2003
52,373	Agilent Technologies (Wkrs)	Ft. Collins, CO	07/22/2003	07/16/2003
52,374	Ellwood City Forge (Comp)	Ellwood City, PA	07/23/2003	07/23/2003
52,375	Sanmina SCI Corporation (Wkrs)	Huntsville, AL	07/23/2003	07/22/2003
52,376	Delphi Corporation (Wkrs)	Kettering, OH	07/23/2003	07/22/2003
52,377	Weyerhaeuser Company (Comp)	Rothschild, WI	07/23/2003	07/23/2003
52,378	Hitachi Automotive Products, Inc. (Wkrs)	Harrodsburg, KY	07/23/2003	07/17/2003
52,379	Marity (Wkrs)	Fenton, MO	07/23/2003	07/22/2003
52,380	Precision Roll Grinders, Inc. (Wkrs)	Allentown, PA	07/24/2003	07/18/2003
52,381	Belding Hausman, Inc. (Comp)	Lincolntown, NC	07/24/2003	07/22/2003
52,382	Mar-Bax Shirt Co., Capital Mercury Appar (AR)	Gassville, AR	07/24/2003	07/23/2003
52,383	AG Communication System (Wkrs)	Phoenix, AZ	07/24/2003	07/17/2003
52,384	Slater Screen Print Corporation (Wkrs)	Pawtucket, RI	07/24/2003	07/23/2003
52,385	Derby Fabricating (Comp)	Galesburg, IL	07/24/2003	07/23/2003
52,386	F/V Family Pride (Comp)	Kodiak, AK	07/25/2003	07/24/2003
52,387	F/V Viking (Comp)	Cordova, AK	07/25/2003	07/23/2003
52,388	RP Adams Company, Inc. (USWA)	Tonawanda, NY	07/25/2003	07/17/2003
52,389	Master Carvers of Jamestown (Wkrs)	Jamestown, NY	07/25/2003	07/16/2003
52,390	Eaton (Comp)	Ann Arbor, MI	07/25/2003	07/11/2003
52,391	GE Industrial Systems (Wkrs)	Mebane, NC	07/25/2003	07/21/2003
52,392	Chromalox, Inc. (Comp)	Ogden, UT	07/25/2003	07/23/2003
52,393	Keane, Inc. (Wrkrs)	Cypress, CA	07/25/2003	07/15/2003
52,394	Guilford East (Wkrs)	Wallace, NC	07/25/2003	07/21/2003
52,395	Cross USA (Wkrs)	Watford City, ND	07/25/2003	07/25/2003
52,396	Phoenix Technologies, LTD (Wkrs)	Irvine, CA	07/25/2003	06/17/2003
52,397	Oxford Textile (NJ)	Oxford, NJ	07/25/2003	07/10/2003
52,398	American Racing (Comp)	Rancho Dominque, CA	07/25/2003	07/17/2003
52,399	Morelock Enterprises (OR)	Bend, OR	07/25/2003	07/24/2003
52,400	Kollsman, Inc. (Wkrs)	Merrimark, NH	07/25/2003	06/06/2003
52,401	Ivaco Steel Processing (Wkrs)	Tonawanda, NY	07/25/2003	07/24/2003
52,402	Sanmina—SCI (Comp)	Westbrook, ME	07/25/2003	07/17/2003
52,403	Jones Equipment (Wkrs)	Missoula, MT	07/25/2003	07/24/2003
52,404	Curtis Specialty Papers (Comp)	Port Huron, MI	07/25/2003	07/24/2003
52,405	Matheson Tri-Gas (Comp)	San Antonio, TX	07/25/2003	07/24/2003
52,406	Major Wire and Conductor International (IBEW)	Chicopee, MA	07/25/2003	07/17/2003

[FR Doc. 03–20718 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee on Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Reestablishment of the Maritime Advisory Committee for Occupational Safety and Health (MACOSH); appointment of Committee members; Amendment.

SUMMARY: In the July 31, 2003, **Federal Register,** OSHA published a notice reestablishing the Maritime Advisory Committee for Occupational Safety and Health (MACOSH) and appointing the committee members (68 FR 44970). Three names were inadvertently omitted. The notice is hereby amended to add the following names and organizations they represent: Peter Schmidt, State of Washington; Augustin Tellez, Seafarers International Union; and Charles I. Thompson III, Virginia International Terminals.

FOR FURTHER INFORMATION CONTACT: OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–1999.

Authority

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 actions in this document are taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 5–2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC, this 8th day of August, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–20733 Filed 8–13–03; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting

September 16–17, 2003—Amargosa Valley, Nevada: The U.S. Nuclear Waste Technical Review Board will meet to discuss U.S. Department of Energy (DOE) work related to the natural features of a spent nuclear fuel and high-level radioactive waste repository proposed for Yucca Mountain in Nevada. The DOE also will present updates on chlorine-36 studies, on

performance confirmation, and on transportation activities.

Pursuant to its authority under section 5051 of Public Law 100–103, Nuclear Waste Policy Amendments Act of 1987, on Tuesday, September 16, and for a half day on Wednesday, September 17, 2003, the U.S. Nuclear Waste Technical Review Board (Board) will meet in Amargosa Valley, Nevada. Among other topics, the Board will discuss U.S. Department of Energy (DOE) work related to the natural features of a possible repository for the disposal of spent nuclear fuel and high-level radioactive waste. The DOE is preparing a license application to be submitted to the U.S. Nuclear Regulatory Commission for construction of such a repository at Yucca Mountain in Nevada. The meeting is open to the public, and several opportunities for public comment will be provided. The Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste.

The Board meeting will be held at the Longstreet Inn; HCR 70, Box 559; Amargosa Valley, Nevada. The telephone number is (775) 372–1777; the fax number is (775) 372–1280. The meeting will start at 8 a.m. on both days.

On Tuesday, the meeting will begin with a program update and project overview. These will be followed by a status report on progress in estimating the performance of the engineered components of the proposed repository and on efforts to reconcile various chlorine-36 studies. The agenda then will turn to several presentations relating to flow and transport in the unsaturated and saturated zones.

On Wednesday, a representative of the Nye County Board of Commissioners has been invited to present opening remarks. These will be followed by a status report on the DOE's performance confirmation plans and by updates on igneous issues and on DOE activities related to the transportation of spent nuclear fuel and high-level radioactive waste. The meeting will end around noon on Wednesday.

Opportunities for public comment will be provided before the lunch break and at the end of the session on Tuesday and at the end of the half-day session on Wednesday. In addition, interested members of the public are invited to join Board members for coffee from 7:15 a.m. to 7:55 a.m. on Wednesday, September 17, at the Longstreet Inn. Those wanting to speak during the public comment periods are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. If interested parties do not want to speak during the public comment session, they may submit questions in writing to the Board. If time permits, the questions will be addressed during the meeting.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at *www.nwtrb.gov.* Beginning on October 18, 2003, transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff.

A block of rooms has been reserved at the Longstreet Inn. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. For more information, contact Karyn Severson; Director, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495.

Dated: August 11, 2003.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 03–20748 Filed 8–13–03; 8:45 am]

BILLING CODE 6820–AM–M

POSTAL SERVICE

Sunshine Act Meeting

Governors Vote To Close August 7, 2003, Meeting

By telephone vote on August 7, 2003, a majority of the Governors contacted and voting, the Governors voted to close to public observation a meeting held via teleconference. The Governors determined that prior public notice was not possible.

ITEM CONSIDERED: 1. Personnel Matters and Compensation Issues.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, William T. Johnstone, at (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 03–20948 Filed 8–12–03; 3:33 pm]

BILLING CODE 7710–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation C, OMB Control No. 3235–0074, SEC File No. 270–068. Form SB–1, OMB Control No. 3235–0423, SEC File No. 270–374.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget request for extension of the previously approved collections of information discussed below.

Regulation C provides standard instructions to guide persons when filing registration statements under the Securities Act of 1933. The information collected is intended to ensure the adequacy of information available to investors in the registration of securities. The information provided is mandatory. Regulation C is assigned one burden hour for administrative convenience because the regulation simply prescribes the disclosure that must appear in other filings under the federal securities laws. Also, persons who respond to the collection information contained in Regulation C are not required to respond unless the forms display a currently valid control number.

Small Business issuers use Form SB–1, as defined in Rule 405 of the Securities Act of 1933 (''Securities Act'') to register up to $10 million of securities to be sold for cash, if they have not registered more than $10 million in securities offerings in any continuous 12-month period, including the transaction being registered. The information to be collected is intended to ensure the adequacy of information available to investors in the registration of securities and assures public availability. The information provided is mandatory. All information provided to the Commission is available to the

public for review. Approximately 17 respondents filed Form SB–1 during the last fiscal year at an estimated 177 hours per response for a total annual burden of 12,036 hours. It is estimated that 25% of the total burden (3,009 hours) is prepared by the company. Also, persons who respond to the collection information contained in Form SB–1 are not required to respond unless the form displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 5, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20695 Filed 8–13–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48293; File No. SR–CBOE–2002–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Permanent Approval of the Rapid Opening System

August 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 16, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On February 6, 2003, CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adopt ROS on a permanent basis.[4] The text of the proposed rule change appears below. Deleted text is in brackets.

Rule 6.2A

(a)–(c) No change.

[(d) Pilot Program.

This Rule (and the sentences in Rule 6.2 and Rule 6.45 referring to this Rule) will be in effect until September 30, 2002 on a pilot basis.]

* * * Interpretation and Policies:

.01–.02 Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 9, 1999, the Commission approved, on a pilot basis, the implementation of ROS.[5] ROS is a system developed by the Exchange to open an entire options class, all series, as a single event, based on a single underlying value. The ROS pilot program is due to expire on September 30, 2003.[6] The Exchange proposes to make the ROS pilot program permanent.

CBOE represents that ROS has successfully facilitated expedited openings of options classes on the Exchange, thereby improving market efficiency for all market participants. CBOE represents that ROS has provided the Exchange's market-makers with the ability to open option classes within seconds of the opening of the underlying security. CBOE represents that by entering into open trading more quickly using ROS, customer orders have been addressed in open trading in a more timely manner. CBOE represents that ROS has also prevented large numbers of orders from queuing on the Exchange's book and live ammo screens immediately after the opening, thus, providing the order book official and designated primary market maker staff with the ability to handle the orders in a more expeditious manner.

In the Pilot Program Approval Order, the Commission requested that the Exchange study certain issues during the pilot program and produce a report to the Commission addressing those issues prior to seeking permanent approval of ROS. CBOE represents that the issues raised by the Commission were the following: (1) How and when market-makers set ROS risk and size thresholds, (2) how often such thresholds are exceeded and result in the adjustment of AutoQuote,[7] (3) the effect of AutoQuote adjustments on the quality of customer executions, (4) any effects on existing order execution priority, and (5) the handling of and adjustments made for non-bookable orders. CBOE represents that prior to the submission of this proposed rule change, the Exchange submitted a report

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[1] 15 U.S.C. 78(s)(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jaime Galvan, Attorney II, Legal Division, CBOE, to Terri Evans, Assistant Director, Division of Market Regulation, dated January 17, 2003 (''Amendment No. 1''). In Amendment No. 1, CBOE described its plans to incorporate the AutoQuotes sent into its Rapid Open System (''ROS'') by market makers into its illegal quote width surveillance program; explained how the implementation of Phase V of the Consolidated Options Audit Trail plan would facilitate the Exchange's efforts at monitoring activities on ROS; provided greater detail regarding the observations of ROS openings conducted by Exchange staff during the pilot period; and made minor changes to its discussion section.

[4] CBOE also proposed to extend the ROS pilot program. However, on September 25, 2002, CBOE submitted another proposal to extend the ROS pilot program, which replaced and superseded the portion of SR–CBOE–2002–55 that proposed to extend the ROS pilot program. This proposal was effective upon filing. *See* Securities Exchange Act Release No. 46572 (September 30, 2002), 67 FR 62508 (October 7, 2002).

[5] *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999) (''Pilot Program Approval Order''). ROS is governed by CBOE Rule 6.2A.

[6] The Commission has extended the ROS pilot program five times. See Securities Exchange Act Release Nos. 42596 (March 30, 2000), 65 FR 18397 (April 7, 2000) (extending the pilot program until September 30, 2000); 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000) (extending the pilot program until September 30, 2001), 44891 (October 1, 2001), 66 FR 51483 (October 9, 2001) (extending the pilot program until September 30, 2002); 46572 (September 30, 2002), 67 FR 62508 (October 7, 2002) (extending the pilot program until March 31, 2003; and 47573 (March 26, 2003), 68 FR 15780 (April 1, 2003) (extending the pilot program until September 30, 2003).

[7] Under Interpretation .02 to CBOE Rule 6.2A, the term ''AutoQuote'' means either the Exchange's AutoQuote system or a proprietary autoquote system operated by a member of the trading crowd where the particular ROS class is traded.

to the Commission addressing each of these issues in depth (''ROS Study'').

With respect to issues 1 and 2, the Exchange represents that it has observed that in general, market-makers have set the contract and delta thresholds on ROS at a level which ensures that an options class that has orders to trade will not auto-open, in order to avoid openings based on erroneous prints in the underlying security or delayed updates to bid/ask information on underlying securities. Nonetheless, the Exchange represents that it has still been able to open classes within seconds of the opening of the underlying class because ROS can open classes very quickly even if they are not set to auto-open. CBOE represents that based on Exchange staff observations of ROS openings during the pilot period, AutoQuote adjustments by market-makers after the ''lock'' is initiated are rare.

With respect to issue 3, the Exchange believes that market-maker adjustments to AutoQuote have had no adverse effect on the quality of customer executions. In fact, CBOE represents that AutoQuote adjustments are made to ensure the accurate pricing of options based on the opening price of the underlying security. Market-makers are required to price contracts in a manner consistent with their obligations under CBOE Rule 8.7(b)(iv). The Exchange has published regulatory circulars to remind market makers of their obligation to set AutoQuote in accordance with Exchange rules.[8] CBOE believes that scrutiny by customers and firms is another factor that ensures that market-makers adjust AutoQuote values consistent with their obligation.

The Exchange represents that it has submitted along with the ROS Study a written description of the methods employed by the Exchange to surveil market-maker activities on ROS. The Exchange believes that other than the situation where ROS has opened based on an incorrect underlying value, there have been no customer complaints regarding ROS opening prices.

With respect to issue 4, the Exchange believes that ROS has served to protect the quality of executions received by non-bookable orders that participate in the opening. The Exchange has developed a procedure for including non-bookable orders (firm, broker-dealer and customer contingency orders) into the opening process. CBOE represents that this procedure has been incorporated into CBOE Rule 6.2A and has been detailed in two regulatory circulars.[9] The Exchange believes ROS has enhanced the quality of customer executions and has served to provide non-bookable orders represented before the open with the executions that they deserve on the opening. CBOE represents that as is demonstrated by the statistics in the ROS Study, during the review period noted, the vast majority of orders that traded during the ''opening period'' (defined as the ROS opening plus the first minute after the ROS opening) received the ROS opening price or better.[10]

The Exchange represents that it is committed to ensuring that non-bookable orders that participate on the opening continue to receive quality executions. The Exchange represents that the implementation of the requirement under Phase V of the Consolidated Options Audit Trail (''COATS'') Plan that all non-electronic orders must be captured electronically for audit trail purposes will facilitate the Exchange's efforts in monitoring on an ongoing basis the executions received by non-bookable orders that participate in the opening. [11] CBOE anticipates that after the implementation of COATS Phase V, a non-bookable order sent to the Exchange prior to the opening will be captured electronically and incorporated into the Exchange's audit trail. CBOE believes this will facilitate its regulatory staff's ability to investigate with more speed and efficiency any complaint regarding the execution received by a non-bookable order on the opening, in that the Exchange will now have an electronic record of the time of receipt of the order, in addition to the order information and the execution price of the order.[12]

With respect to issue 5, the Exchange represents that it has observed that firms consistently wait until after the ROS opening has been completed to represent non-bookable orders. CBOE believes that by waiting until after ROS opens, the firms have a better sense of where they may trade the order after opening quotes have been disseminated. CBOE represents that the statistics in the ROS Study demonstrate that few, if any, non-bookable orders are being represented before ROS openings. The Commission stated in the Pilot Program Approval Order that prior to considering permanent approval of ROS, it expected the Exchange to develop a workable plan for electronic incorporation of non-bookable orders on ROS. The Exchange believes, for the reasons set forth above, that permanent approval of ROS should not be contingent upon the development of a plan to electronically incorporate non-bookable orders on ROS. CBOE believes that such a systems change would have very little impact on ROS trading due to the fact that non-bookable orders are virtually non-existent before the open. The Exchange represents that it continues to consider modification of EBook to include other order types, but it is uncertain at this time when such a project might be completed.

Based on the successful operation of ROS over the past three years, the Exchange proposes that the Commission approve ROS on a permanent basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5),[14] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, because ROS has improved market efficiency for all market participants by successfully facilitating expedited openings of options classes on the Exchange during the pilot period.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[8] *See* CBOE Regulatory Circulars RG99–91 (April 14, 1999) and RG02–34 (May 28, 2002).

[9] *See* CBOE Rule 6.2A(ii), and Regulatory Circulars RG99–35 (February 10, 1999) and RG00–40 (March 13, 2000).

[10] *See* Amendment No. 1, *supra* note 3.

[11] The COATS Plan is a plan that the options exchanges are required to submit to the Commission in order to comply with Section IV.B.e. of the *Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. See* In the Matter of Certain Activities of Options Exchanges, Securities Exchange Act Release No. 43268, September 11, 2000; Administrative Proceeding File No. 3–10282.

[12] *See* Amendment No. 1, *supra* note 3.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2002–55 and should be submitted by September 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary,

[FR Doc. 03–20696 Filed 8–13–03; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48289; File No. SR–DTC–2002–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Fee Schedule for Services

August 6, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 21, 2002, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends DTC's service fee schedule to add a fifty-dollar fee for the assignment of a Financial Industry Number Standard (FINS) number.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a fee for assigning FINS numbers. Industry participants use FINS numbers for identification purposes for such activities as making filings with the Securities Information Center (SIC). A firm requesting a FINS number provides DTC with information such as its legal name, business address, mailing address, contact person, and telephone number. DTC checks its database to determine whether the firm already has a FINS number. If the firm already has a FINS number, DTC provides the firm with that number. If the firm does not already have a FINS number, DTC will assign a FINS number to the firm. The proposed fee is designed to recover DTC's estimated service costs and became effective November 22, 2002.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because the fee will equitably be allocated among the parties who are assigned FINS numbers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes fees to be imposed by DTC, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2).[4] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–DTC–2002–14. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR–DTC–2002–14 and should be submitted by September 4, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20768 Filed 8–13–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48294; File No. SR–NASD–2003–122]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposal To Conduct Background Verification and Charge Application Fee for NASD Neutral Roster Applicants

August 6, 2003.

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 August 5, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution proposes to conduct background verification and charge an application fee for NASD neutral roster applicants. NASD does not propose any textual changes to the By-Laws or Rules of NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution 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. NASD Dispute Resolution 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

NASD Dispute Resolution proposes to begin conducting background verifications of all new arbitrator applicants, and to assess an application fee to cover the cost of the verifications.

Background

NASD maintains a pool of approximately 7000 available arbitrators. Currently, arbitrator applicants submit biographical profile forms, together with two letters of reference. The biographical profile forms require applicants to provide detailed information on their business and employment histories, education, training, possible conflicts, experience, expertise, associations with industry members, and other matters. The application also requires a narrative background information statement in which applicants are asked to explain why they believe their experience and knowledge would benefit the process. Attorneys and accountants are further directed to provide specific details about their practices. A copy of the current NASD arbitrator application is attached as Exhibit 2 to the proposed rule change.

Arbitrator information is entered into NASD's database and is provided to parties in the form of a disclosure report during the arbitrator selection process. Arbitrators must update this biographical information on a regular basis. NASD sends frequent reminders to arbitrators about the importance of this obligation, especially after they are notified regarding possible service as an arbitrator. NASD requires arbitrators in each case to affirm that they have reviewed their disclosure report and that it is accurate, and to complete a disclosure checklist attached to the oath. NASD provides each arbitrator on a panel with the co-panelists' biographical profiles in order to facilitate peer reviews for accuracy.[3]

In addition to gathering the above information, NASD currently checks records on the Central Registration Depository (CRD) for arbitrator applicants who have been registered with NASD, most of whom would be categorized as ''non-public'' arbitrators under NASD Rule 10308(a)(4). NASD currently does not verify any of the information provided by arbitrator applicants who do not have CRD records, most of whom would be classified as ''public'' arbitrators under NASD Rule 10308(a)(5).

Proposed Rule Change

NASD proposes to expand its verification of background information to cover all arbitrator applicants. NASD believes this will provide additional protection to parties using the Dispute Resolution forum, raise the standards of the neutral roster, and enhance investor confidence in the integrity of the forum.

Specifically, NASD Dispute Resolution has identified a vendor to provide the following verification services:

- Criminal check in the county of the applicant's residence;
- Federal criminal check;
- Employment verification; and
- Professional license verification.

The verification fee will be $80.00 per application. This fee will cover the vendor's expected charge for verification of each application, with the understanding that the actual work required to verify each application will vary. For example, some applicants will have only one employer over the past ten years, and some will have two or more. NASD believes that having a single, reasonable fee for background verification will be more practical administratively than charging different fees that vary depending on each applicant's background. For this amount, the vendor will perform county and federal criminal record checks; verify any professional licenses; and check the last employer or, if the applicant has been employed for fewer than ten years by the same employer, then the last two employers. To keep the

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For additional information on procedures designed to reveal potential conflicts of interest, see Professor Michael A. Perino, *Report to the SEC Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations* (Nov. 12, 2002), available on the Commission's Website, Market Regulation page, at: *http://www.sec.gov/pdf/arbconflict.pdf.*

fee reasonable, NASD will assume that verification of professional licenses provides an indirect check on the applicant's education, since licensing authorities generally verify an applicant's educational history. If the applicant does not have a professional license, however, then the vendor will substitute verification of the last degree awarded.

The background verification fee will be charged for new arbitrator applications that are received by NASD after the effective date of the proposed rule change. It will not apply to arbitrators currently on NASD's arbitrator roster who wish to update information they supplied previously. Applications received after the effective date will not be processed until NASD receives the proper fee.

NASD Dispute Resolution represents that the effective date of this proposal will be the first business day of the first month immediately following Commission approval of the proposal.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act,[4] in general, and furthers the objectives of Section 15A(b)(6),[5] in particular, 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 verifying background information and credentials for arbitrator applicants will protect investors and the general public and enhance the integrity of the arbitration process.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

[4] 15 U.S.C. 78o–3(b)

[5] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** [6] or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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–2003–122 and should be submitted by September 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20697 Filed 8–13–03; 8:45 am]

BILLING CODE 8010–01–P

[6] The NASD withdrew its request for accelerated approval and a shortened comment period. Telephone call between Jean Feeney, NASD Dispute Resolution, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on August 6, 2003.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48303; File No. SR–NASD–2003–120]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish a Revenue Sharing Program

August 8, 2003.

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 August 1, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder [4] as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish a revenue sharing program. Nasdaq will implement the proposed rule change on August 1, 2003.

The text of the proposed rule change is below. Proposed new language is in italics.[5]

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a)–(t) No change

(u) Nasdaq Revenue Sharing Program.

After Nasdaq earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all Market Participant Operating Revenue (''MPOR'') shall be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Note that subsection (t) of Rule 7010 has been reserved for the rule change proposed in SR–NASD–2003–114 (July 22, 2003), which has been submitted for Commission approval pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2).

eligible for sharing with Nasdaq Quoting Market Participants (as defined in Rule 4701). MPOR is defined as operating revenue that is generated by Nasdaq Quoting Market Participants. MPOR consists of transaction fees, technology fees, and market data revenue that is attributable to Nasdaq Quoting Market Participant activity in Nasdaq National Market and SmallCap Market securities. MPOR shall not include any investment income or regulatory monies. The sharing of MPOR shall be based on each Nasdaq Quoting Market Participant's pro rata contribution to MPOR. In no event shall the amount of revenue shared with Nasdaq Quoting Market Participants exceed MPOR. To the extent market data revenue is subject to year-end adjustment, MPOR revenue may be adjusted accordingly.

* * * * *

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

As part of an ongoing effort to reduce the costs incurred by market participants to use Nasdaq services, Nasdaq is implementing a general revenue sharing program based on The Cincinnati Stock Exchange's revenue sharing program, as adopted in 1999 and subsequently amended.[6] The purpose of the proposed rule change is to provide an incentive for growth in member activity. To compete more effectively, Nasdaq proposes to reduce significantly the cost of doing business for Nasdaq Quoting Market Participants (as defined in Rule 4701) by means of a quarterly revenue sharing program, without diminishing the quality of the market, including regulatory quality.[7]

The proposed rule change contemplates Nasdaq sharing with Nasdaq Quoting Market Participants (*i.e.*, market makers and ECNs that participate in SuperMontage) all or a portion of Nasdaq's Market Participant Operating Revenue (''MPOR'') after operating expenses and working capital needs have been met. MPOR is defined as all operating revenue that is generated by Nasdaq Quoting Market Participants. MPOR consists of transaction fees, technology fees, and market data revenue that is attributable to Nasdaq Quoting Market Participant activity in Nasdaq National Market and SmallCap Market securities. All regulatory monies and investment income are excluded from MPOR.

Under the proposal, Nasdaq's Board of Directors (acting through its Finance Committee or as a whole) would have the authority to determine on an ongoing basis the appropriate amount of MPOR to be shared with Nasdaq Quoting Market Participants. In making this determination, the Board would be guided by the need to balance the objective of sharing meaningful portions of MPOR with the objective of maintaining Nasdaq's financial integrity.[8] To simplify the administration of the revenue sharing program and smooth out monthly expense fluctuations, the program will operate on a quarterly basis. In addition, to the extent that Nasdaq market data revenue is subject to a year-end adjustment, revenues distributed to Nasdaq Quoting Market Participants are subject to adjustment accordingly, to ensure that member receipts of market data revenue are consistent with the year-end true up procedures applied under the Nasdaq UTP Plan.

MPOR will be shared with Nasdaq Quoting Market Participants on a pro rata basis. After Nasdaq has accounted for operating expenses and working capital contributions, each Nasdaq Quoting Market Participant will receive a percentage of the MPOR to be shared that is equal to that firm's percentage contribution to MPOR. In no event will the amount of revenue shared with Nasdaq Quoting Market Participants exceed MPOR.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[9] in general, and with section 15A(b)(6) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed change will create an incentive for members to use Nasdaq systems, thereby increasing competition, which, in turn, will enhance the National Market System.

In addition, Nasdaq believes that the proposed rule change is consistent with section 15A(b)(5) of the Act,[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Specifically, the proposal provides for revenue sharing with Nasdaq Quoting Market Participants, who are primarily responsible for Nasdaq's financial viability and growth.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(2) of Rule 19b–4 thereunder,[13] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for

[6] Securities Exchange Act Release No. 41082 (February 22, 1999), 64 FR 10035 (March 1, 1999) (SR–CSE–99–02) (notice); Securities Exchange Act Release No. 41286 (April 14, 1999), 64 FR 19843 (April 22, 1999) (SR–CSE–99–02) (approval order); Securities Exchange Act Release No. 46688 (October 18, 2002), 67 FR 65816 (October 28, 2002) (SR–CSE–2002–14) (notice of filing and immediate effectiveness).

[7] *See infra* note 8.

[8] In particular, Nasdaq will not compromise its regulatory responsibilities by sharing revenue that would more appropriately be used to fund regulatory responsibilities. Nasdaq will be mindful of its regulatory responsibilities when determining its working capital needs. *See*, Securities Exchange Act Release No. 41286 (April 14, 1999), 64 FR 19843, 19844 (April 22, 1999) (SR–CSE–99–02).

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2003–120 and should be submitted by September 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20767 Filed 8–13–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48305; File No. SR–NASD–2003–99]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Rule 6260 Regarding New Issue Notification Procedures for TRACE-Eligible Securities

August 8, 2003.

On June 19, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 6260 of NASD's Trade Reporting and Compliance Engine (''TRACE'') rules. Specifically, NASD is proposing to amend Rule 6260(a) and (b) to require members to provide additional, descriptive information in the notice that is sent to NASD that identifies the basic terms of a new TRACE-eligible security (''new issue notification''), and to provide the information required in Rule 6260(b) by email or facsimile. The proposal requires the managing underwriter of any newly issued TRACE-eligible security to provide to the TRACE Operations Center information, as determined by NASD, that is required to determine if a TRACE-eligible security must be disseminated under Rule 6250 (*e.g.*, size of issue and rating). Notice of the proposed rule change, including a discussion of the proposal in greater detail, was published for comment in the **Federal Register** on July 8, 2003.[3] The Commission received no comments regarding the proposal.

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a registered securities association and, in particular, with the requirements of Section 15A(b)(6) of the Act.[4] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6) of the Act in that it is 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.[5]

The Commission believes that requiring NASD members to provide additional information about new TRACE-eligible securities is necessary for NASD to determine if those new securities are subject to dissemination, and that requiring that new issue information be provided by email or facsimile will provide NASD with written records about TRACE-eligible securities. The Commission also believes that the proposed rule change will improve the operation of TRACE which provides price transparency and provides regulators with heightened capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices. For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2003–99), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20769 Filed 8–13–03; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 48113 (June 30, 2003), 68 FR 40727.

[4] 15 U.S.C. 78o–3(b)(6).

[5] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Bureau of Educational and Cultural Affairs (ECA)

[Public Notice 4442]

Notice: Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) Requirement for all FY–2004 ECA Grants and Cooperative Agreements

SUMMARY: This announcement applies to all ECA Requests for Grant Proposals (RFGP) currently published in the **Federal Register**. An Office of Management and Budget (OMB) policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. This identifier will be used for tracking purposes and to validate address and point of contract information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or by applying online at this address: *http://www.dnb.com/us/duns_update/.*

To comply with this directive, the Bureau of Educational and Cultural Affairs (ECA) requests that all organizations submitting proposals for grants with a start date on or after October 1, 2003 include a DUNS number with each grant application. Please write in the DUNS number in box number five, next to the Employer Identification Number (EIN) on the ECA ''Assistance Award Proposal Cover Sheet'' contained in the Bureau's

Proposal Submission Instructions (PSI) application package.

OMB is currently in the process of revising the Application for Federal Assistance Form (SF–424) to include a space for inclusion of the applicant's DUNS number. This revised SF–424 will eventually replace ECA's current ''Assistance Award Proposal Cover Sheet'' and will be incorporated into the PSI.

ADDITIONAL INFORMATION: For a list of currently published grant announcements, please visit ECA's Web site at *http://exchanges.state.gov/education/rfgps/*. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.*

Dated: August 7, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–20750 Filed 8–13–03; 8:45 am]

BILLING CODE 4710–05–M

DEPARTMENT OF STATE

[Public Notice 4408]

Shipping Coordinating Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC), Maritime Law Subcommittee, will conduct an open meeting at 10 a.m. on Monday, October 6, 2003 in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to prepare for the Eighty-Seventh Session of the International Maritime Organization's (IMO) Legal Committee (LEG 87) scheduled from October 13, to October 17, 2003.

The provisional LEG 87 agenda calls for the Legal Committee to examine the draft Wreck Removal Convention. Also the Committee will review the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol). To be addressed as well is the Provision of Financial Security which includes a progress report on the work of the Joint IMP/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding claims for Death, Personal Injury and Abandonment of Seafarers; and includes follow-up resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. The Legal Committee will examine places of refuge, treatment of persons rescued at sea, the code of practice for the investigation of crimes of piracy and armed robbery at sea; as well as measures to protect crews and passengers against crimes committed on vessels. Also on the agenda is monitoring the implementation of the HNS Convention; review of the status of Conventions and other treaty instruments adopted as a result of the work of the Legal Committee, matters arising from the ninetieth session of the Council, work programme and long-term work plans, and technical co-operation (subprogramme for maritime legislation). Additionally, the provisional LEG 87 agenda allots time to address any other issues that may arise on the Legal Committee's work program.

Members of the public are invited to attend the SHC subcommittee meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should call or send an e-mail two days before the meeting. Upon request, participating by phone may be an option. For further information please contact Captain Joseph F. Ahern or Lieutenant Martha Rodriguez, at U.S. Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street, SW., Washington, DC 20593–0001; e-mail *cleonardcho@comdt.uscg.mil*, telephone (202) 267–1527; fax (202) 267–4496.

Dated: July 31, 2003.

Frederick J. Kenney,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–20749 Filed 8–13–03; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA); Notice Regarding the 2003 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces the 2003 Annual Review of the Andean Trade Preference Act (ATPA). The deadline for the submission of petitions for the 2003 Annual ATPA Review is September 15, 2003. USTR will publish a list of petitions filed in response to this announcement in the **Federal Register**.

ADDRESSES: Submit petitions by electronic mail (e-mail) to *FR0088@ustr.gov.* If unable to submit petitions by e-mail, contact the Office of the Americas, Office of the United States Trade Representative (USTR), 600 17th St., NW., Washington, DC 20508, at (202) 395–5190.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, Office of the Americas, Office of the United States Trade Representative, 600 17th St., NW., Washington, DC 20508. The telephone number is (202) 395–5190 and the facsimile number is (202) 395–9675.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201–06), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210), provides for trade benefits for eligible Andean countries. Consistent with Section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of articles and countries for the benefits of the ATPA as amended. The 2003 Annual ATPA Review is the first such review to be conducted pursuant to the ATPA regulations.

To qualify for the benefits of the ATPA and ATPDEA, each country must meet several eligibility criteria, as set forth in sections 203(c) and (d), and section 204(b)(6)(B) of the ATPA as amended (19 U.S.C. 3202(c), (d); 19 U.S.C. 3203(b)(6)(B)), and as outlined in the **Federal Register** notice USTR published to request public comment regarding the designation of eligible countries as ATPDEA beneficiary countries (67 FR 53379). Under section 203(e) of the ATPA as amended (19 U.S.C. 3202(e)), the President may withdraw or suspend the designation of any country as a beneficiary country, and may also withdraw, suspend, or limit preferential treatment for any product of any beneficiary country, if the President determines that, as a result of changed circumstances, the country is not meeting the eligibility criteria.

The ATPA regulations provide the schedule of dates for conducting an annual review, unless otherwise specified by **Federal Register** notice. Notice is hereby given that, in order to be considered in the 2003 Annual ATPA Review, all petitions to withdraw or suspend the designation of a country as an ATPA or ATPDEA beneficiary country, or to withdraw, suspend, or limit application of preferential treatment to any article of any ATPA country under the ATPA, or to any

article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), (4)) of the ATPA, must be received by the Andean Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. EDT on September 15, 2003. Petitioners should consult 15 CFR 2016.0 regarding the content of such petitions.

Petitions must be submitted, in English, to the Andean Subcommittee, Trade Policy Staff Committee. Petitions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6. If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked ''BUSINESS CONFIDENTIAL'' in large, bold letters at the top and bottom of every page of the document. The public version that does not contain business confidential information must be clearly marked either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL'' in large, bold letters at the top and bottom of every page.

In order to facilitate prompt consideration of submissions, USTR strongly urges and prefers electronic mail (e-mail) submissions in response to this notice. E-mail submissions should be single copy transmissions in English, and with the total submission including attachments should not exceed 50 pages. E-mail submissions should use the following subject line: ''2003 Annual ATPA Review—Petition.'' Documents must be submitted as either WordPerfect (''.WPD''), MSWord (''.DOC''), or text (''.TXT'') file. Documents should not be submitted as electronic image files or contain imbedded images (for example, ''.JPG'', ''PDF'', ''.BMP'', or ''.GIF''), as these type files are generally excessively large. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel, pre-formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

The file name of any document containing business confidential information attached to an e-mail transmission should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the person or party submitting the petition. Submissions by e-mail should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the submission. The e-mail address for submissions is *FR0088@ustr.gov.*

Public versions of all documents relating to this review will be available for review shortly after the due date by appointment in the USTR Public Reading Room, 1724 F Street NW., Washington, DC. Availability of documents may be ascertained, and appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Bennett M. Harman,

Deputy Assistant U.S. Trade Representative for Latin America.

[FR Doc. 03–20791 Filed 8–13–03; 8:45 am]

BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intention to Grant Exclusive License in Government-owned Patents

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration hereby gives notice of its intention to grant an exclusive license in the invention titled ''Heat Release Rate Calorimeter for Milligram Samples'', U.S. Patent No. 6,464,391, filed December 22, 2000, and a nonexclusive license in the invention titled ''Microscale Combustion Calorimeter'', U.S. Patent No. 5,981,290, filed April 7, 1997. The proposed licensee is the inventor, an employee of the Federal Aviation Administration. The license granted will comply with 35 U.S.C. 209 and 37 CFR part 404. The respective rights of the Government and the Government employee inventor have previously been determined in accordance with 37 CFR part 501.

The Federal Aviation Administration previously published a notice in the **Federal Register** announcing the availability for licensing of these two government-owned inventions. 67 FR 60718, Sept. 26, 2002. There were no responses to that notice.

DATES: Comments in response to this notice may be submitted on or before September 15, 2003.

ADDRESSES: Interested parties may contact James Drew, Senior Attorney, ACT–7, Federal Aviation Administration William J. Hughes Technical Center, Atlantic City International Airport, New Jersey 08405, or by e-mail to *james.drew@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Richard E. Lyon, AAR–422, Federal Aviation Administration William J. Hughes Technical Center, Atlantic City International Airport, New Jersey 08405, telephone (609) 485–6076, or by e-mail to *richard.lyon@faa.gov.*

Dated: August 4, 2003

James J. Drew,

Senior Attorney, Intellectual Property.

[FR Doc. 03–20774 Filed 8–13–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order (TSO)–C166, Extended Squitter Automatic Dependent Surveillance—Broadcast (ADS–B) and Traffic Information Service—Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz).

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO)–C166, Extended Squitter Automatic Dependent Surveillance—Broadcast (ADS–B) and Traffic Information Service—Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz). This proposed TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their Extended Squitter ADS–B and TIS–B equipment must meet to be identified with the applicable TSO marking.

DATES: Comments must identify the TSO file number and be received on or before September 15, 2003.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, File No. TSO–C166, 800 Independence Avenue, SW., Washington, DC 20591. *ATTN:* Mr. Robert Duffer. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Duffer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–120, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 385–4557, FAX: (202) 385–4651.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed TSO may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

This proposed TSO prescribes the MPS for airborne equipment to support Automatic Dependent Surveillance—Broadcast (ADS–B) using Extended Squitter equipment operating on the frequency of 1090 MHz. ADS–B is a system by which aircraft and certain equipped surface vehicles can share position, velocity, and other information with one another, and with ground-based facilities such as air traffic services via radio broadcast techniques. Extended Squitter ADS–B will also support the reception of Traffic Information Service—Broadcast (TIS–B) messages. Two major classes of 1090 MHz Extended Squitter ADS–B equipment are supported by this proposed TSO; Class A() equipment which incorporates both a broadcast and received subsystem, and Class B() equipment which supports broadcast only.

How to Obtain Copies

A copy of the proposed TSO–C166 may be obtained via the information contained in section titled ''For Further Information Contact'', or from the FAA Internet Web site at *http://www.faa.gov/certification/aircraft/tsoa.htm.*

Copies of RTCA Document No's. RTCA/DO–160D, ''Environmental Conditions and Test Procedures for Airborne Equipment,'' dated July 29, 1997; RTCA/DO–178B, ''Software Considerations in Airborne Systems and Equipment Certification,'' dated December 1, 1992; and RTCA/DO–260A, ''Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance—Broadcast (ADS–B) and Traffic Information Services—Broadcast (TIS–B),'' dated April 10, 2003, may be purchased from RTCA, Inc., 1828 L Street, NW., Suite 815, Washington, DC 20036. Copies can also be obtained through the RTCA Internet Web site at *http://www.rtca.org/.*

Issued in Washington, DC, on August 11, 2003.

Susan J. M. Cabler,

Deputy Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–20773 Filed 8–13–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–03–15852, Notice 1]

Pipeline Safety: Pipeline Industry Implementation of Effective Public Awareness Programs

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of workshops on industry consensus standard American Petroleum Institute (API) Recommended Practice (RP) 1162, ''Public Awareness Programs for Pipeline Operators.''

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) and the National Association of Pipeline Safety Representatives (NAPSR) will co-sponsor two workshops with the pipeline industry trade associations (API, Interstate Natural Gas Association of America, Association of Oil Pipelines, American Gas Association, and American Public Gas Association) to introduce and discuss industry consensus standard API Recommended Practice (RP) 1162, ''Public Awareness Programs for Pipeline Operators.'' These workshops will also serve to introduce and discuss the statutory requirement that pipeline operators complete self-assessments of their public education programs no later than December 17, 2003.

DATES: The first workshop will be held on September 4–5, 2003. The second workshop will be held on September 16–17, 2003.

ADDRESSES: The first workshop will be held at the Westin Galleria, 5060 West Alabama, Houston, TX 77056, (713) 960–8100. The second workshop will be held at the Hyatt Regency Baltimore, 300 Light Street, Baltimore, MD 21202, (410) 528–1234. Operators of hazardous liquid and natural gas transmission pipelines, natural gas local distribution systems and oil and gas gathering systems are urged to attend. To facilitate meeting planning, advance registration for these meetings is strongly encouraged and can be accomplished online at the following Web site: *http://primis.rspa.dot.gov/meetings.* The deadline for registration at both meetings is August 22, 2003.

Members of the public are welcome to attend these workshops. Members of the public who are unable to attend in person can view the meeting over the Internet through the RSPA/OPS Web site: *http://ops.dot.gov.*

Persons wishing to submit comments relating to these workshops may do so by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. You should submit the original and one copy. Anyone who wants confirmation of receipt of their comments must include a stamped, self-addressed postcard. You may also submit comments to the docket electronically. To do so, log on to the Internet Web address *http://dms.dot.gov* and click on ''Help'' for instructions on electronic filing of comments. All written comments should identify the docket and notice numbers which appear in the heading of this notice.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

INFORMATION ON SERVICES FOR INDIVIDUALS WITH DISABILITIES: For information on facilities or services for individuals with disabilities or to request special assistance contact Juan Carlos Martinez (tel: 202–366–1933; e-mail: *juan.martinez@rspa.dot.gov).*

FOR FURTHER INFORMATION CONTACT: Jeff Wiese (tel: 202–366–4595; e-mail: *jeff.wiese@rspa.dot.gov*). You can read comments and other material in the docket on the Internet at: *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The existing pipeline safety regulations at 49 CFR parts 192 and 195 require operators of natural gas and hazardous liquid pipelines to establish continuing education programs to enable customers, the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a pipeline emergency for the purpose of reporting it to the operator or the appropriate public officials. The regulations also require that operators carry out written programs to prevent pipeline damage from excavation activities. Accordingly, pipeline operators have previously conducted public awareness programs with the affected public, emergency responders, and excavators along their routes.

The Pipeline Safety Improvement Act of 2002 (PSIA) requires that each owner or operator of a natural gas or hazardous liquid pipeline facility must carry out a continuing program to educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities, the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event.

The PSIA requires that by December 17, 2003, each owner or operator of a gas or hazardous liquid pipeline facility must review its existing public education program for effectiveness and modify the program as necessary. The completed program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations. The completed program must be submitted to the Secretary of Transportation or, in the case of an intrastate pipeline facility operator, the appropriate State agency, and shall be periodically reviewed by the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

The PSIA also provides that the Secretary of Transportation may issue standards prescribing the elements of an effective public education program. The Secretary may also develop material for use in the program.

In anticipation of this requirement and in response to recommendations from the National Transportation Safety Board (NTSB), RSPA/OPS has encouraged the pipeline industry to work on improving public education programs. The pipeline industry formed a Task Force with representatives from natural gas and liquid petroleum transmission companies, local distribution companies, gathering systems, and industry trade associations. The Task Force has developed a consensus standard establishing guidelines for pipeline operators on development, implementation, and evaluation of public education programs for operating pipeline systems, American Petroleum Institute (API) Recommended Practice (RP) 1162, ''Public Awareness Programs for Pipeline Operators.'' The Task Force sought feedback from local public officials, the public and interested parties. Representatives from RSPA/OPS and NAPSR observed and provided input into the development of the standard. On January 29, 2003, RSPA/OPS hosted a public meeting on this standard in Bellevue, Washington, to encourage additional public participation.

RP 1162 was developed under the guidelines of both API and the American National Standards Institute (ANSI). Following formal adoption, RP 1162 is expected to be published as a national consensus standard in September 2003.

The level of public education and awareness regarding operating pipelines and pipeline safety can only be increased through demonstrably effective education and communication programs. Therefore, RSPA/OPS is considering incorporating RP 1162 into the pipeline safety regulations.

RSPA/OPS has evaluated the PSIA requirements that operators review and modify their public education programs and submit their completed programs to RSPA/OPS. RP 1162 contains guidance on program effectiveness that amply satisfies the statutory requirement. RSPA/OPS and pipeline industry trade associations encourage pipeline operators to complete a formal self-assessment of their public education programs against the guidelines provided in RP 1162. To assist them in this, RSPA/OPS is developing an Internet-based self-assessment that operators can complete electronically. These self-assessments will help operators identify gaps in their public education programs and the improvements needed to align it with the guidance of RP 1162. This will assist operators in meeting the statutory requirement by December 17, 2003.

RSPA/OPS will co-sponsor two workshops with the pipeline industry trade associations (API, Interstate Natural Gas Association of America, Association of Oil Pipelines, American Gas Association, and American Public Gas Association,) to facilitate these operator self-assessments. Each workshop will provide an industry-facilitated review of RP 1162 and a panel discussion of successful public education practices. RSPA/OPS will describe the self-assessment process and will facilitate sessions on effective program evaluation techniques. RSPA/OPS will conduct breakout sessions during these workshops for the hazardous liquid and natural gas transmission pipeline operators. The breakout sessions will provide a more in-depth overview of the self-assessment process and attempt to gauge the current status of public education programs for the transmission pipeline operators by completion of informal self-assessments in advance of the formal self-assessment required by December 17, 2003. All hazardous liquid and natural gas transmission pipeline operators are urged to attend the breakout sessions. It is important that the attending representative be familiar with the operating systems that are covered under the operator's public education program.

Issued in Washington, DC, on August 8, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–20775 Filed 8–13–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34368]

Douglas S. Golden—Acquisition of Control Exemption—Carolina Coastal Railway, Inc.

Douglas S. Golden (Golden), a noncarrier individual, has filed a notice of exemption to acquire control, through stock purchase from Rail Link, Inc. (Rail Link), of Carolina Coastal Railway, Inc. (CLNA), a Class III railroad.[1]

The transaction was scheduled to be consummated on or about July 21, 2003.

Golden states that: (i) The railroads he would control will not connect; (ii) the transaction is not part of a series of anticipated transactions that would connect these railroads with each other

[1] CLNA is an indirect wholly owned subsidiary of noncarrier Genesee & Wyoming Inc., which acquired control of CLNA with its acquisition of control of noncarrier Rail Link. *See Genesee & Wyoming Inc.—Control Exemption—Rail Link, Inc.,* STB Finance Docket No. 33291 (STB served Nov. 18, 1996). Golden already controls, through stock ownership, Landisville Terminal and Transfer Company, a Class III rail carrier.

or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34368, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: John K. Fiorilla, 390 George Street, P.O. Box 1185, New Brunswick, NJ 08903.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: August 7, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–20589 Filed 8–13–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE BOARD

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the OCC, Board, FDIC, and OTS (collectively, the Agencies) may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies hereby give notice that they plan to submit their respective information collections titled, ''Privacy of Consumer Financial Information,'' to OMB for review and approval.

DATES: You should submit your comments to the Agencies and the OMB Desk Officer by September 15, 2003.

ADDRESSES: You should direct your comments to: *OCC:* Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0216, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit their comments by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can make an appointment to inspect the comments by calling (202) 874–5043 for an appointment.

Board: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Steven F. Hanft, (202) 898–3907, Legal Division (Consumer and Compliance Unit), Room MB–3064, Federal Deposit Insurance Corporation, 550 17th St. NW., Washington, DC 20429. All comments should refer to the OMB control number 3064–0136. Comments may be hand-delivered to the guard station at the rear of the 17th St. building (located on F Street) on business days between 7 a.m. and 5 p.m.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

OMB Desk Officer: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative & Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cindy Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, fax number (202) 898–3838, Legal Division (Consumer and Compliance Unit), Federal Deposit Insurance Corporation, Room MB–3064, 550 17th Street, NW., Washington, DC 20429.

OTS: Marilyn K. Burton, OTS Clearance Officer, at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Comments: The Agencies separately requested comments on the proposed extension, without revision, of the information collections contained in the Privacy regulations (OCC, December 26, 2002, 67 FR 78869; Board, April 9, 2003, 68 FR 17397; FDIC, January 2, 2003, 68 FR 121; OTS, December 13, 2002, 67 FR 76775).

Three comments were received: two from trade associations, and one from a financial institution. The financial institution suggested ways the agencies could improve their estimates. The commenters all asserted that the agencies underestimated the burden associated with this collection. Both trade associations also said that far fewer institutions find themselves in circumstances requiring disclosure than the agencies had originally estimated because institutions with less than $1 billion in assets do not share customer information with nonaffiliated third parties. The net effect of these comments would be that the burden-per-institution estimate should be increased, but the number of institutions experiencing burden should be decreased. The agencies believe this conclusion is supported by the past three years' experience in implementing the collection. Accordingly, the agencies have increased their estimate of the burden per respondent for this collection of information, and reduced the estimated number of respondents.

The reporting burden for consumers has increased from the 2000 estimates to the 2003 estimates. This increase reflects the experience of banks since 2000 concerning the number of consumers that actually exercise their right to opt out. Despite the overall increase, the estimated response time per consumer was lowered from one hour to thirty minutes due to a better understanding of the amount of time it takes a consumer to respond to an opt-out notice.

Both trade associations suggested that the agencies develop a ''short form'' privacy notice to permit easier compliance with the statute and its implementing regulation. They both also suggested that the agencies re-interpret the statute's apparent requirement for annual disclosure to mean that annual disclosure is required only when an institution's privacy policies have changed since they were last disclosed. These suggestions exceed the scope of this notice and have been referred to the appropriate program officials for further consideration.

Title:

OCC: Privacy of Consumer Information.

Board: Reporting and Disclosure Requirements Associated With Regulation P (Privacy of Consumer Financial Information).

FDIC: Privacy of Consumer Financial Information.

OTS: Privacy of Consumer Financial Information.

Type of Review: Extension of a currently approved collection.

OMB Control Numbers:

OCC: 1557–0216.

Board: 7100–0294.

FDIC: 3064–0136.

OTS: 1550–0103.

Description: The Gramm-Leach-Bliley Act (Pub. L. 106–102) mandates that the Federal banking agencies issue regulations as necessary to implement notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. Those regulations are found at 12 CFR 40 (OCC); 12 CFR 216 (FRB); 12 CFR 332 (FDIC); and 12 CFR 573 (OTS). This collection of information is contained in those regulations.

The Agencies are proposing to extend OMB approval of the information collection associated with these regulations. This submission involves no change to the regulations or to the information collection requirements.

The information collection requirements are as follows:

Section __.4(a) requires a bank to provide an initial notice to consumers that accurately reflects its privacy policies and practices.

Section __.5(a) requires a bank to provide a notice annually to customers during the continuation of the customer relationship that accurately reflects the bank's privacy policies and practices.

Section __A.7(a)(1) requires a bank to provide a clear and conspicuous notice that accurately explains the right to opt out. The notice must state that the bank discloses or reserves the right to disclose nonpublic personal information to nonaffiliated third parties; that the consumer has the right to opt out of that disclosure; and a reasonable means by which the consumer may exercise the opt out right. Section .10(c) states that a bank may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out (partial opt-out).

Section __.8(a) requires a bank to provide consumers with a revised notice of the bank's policies and procedures and a new opt out notice, if the bank wishes to disclose information in a way that is inconsistent with the notices previously given to a consumer.

The regulation also identifies affirmative actions that consumers must take to exercise their rights. In order for consumers to prevent banks from sharing their information with nonaffiliated parties, they must opt out (§§ __.7(a)(2)(ii), __.10(a)(2) and __.10(c)).

Consumers also have the right at any time during their continued relationship with the bank to change or update their opt out status with the bank (§§ __.7(f) and (g)).

These information collection requirements ensure bank compliance with applicable Federal law.

Affected Public: Business or other for-profit; individuals.

Frequency: Annually.

Burden Estimates:

OCC:

Estimated annual number of institution respondents: Initial notice, 118; annual notice and change in terms, 1,960; opt-out notice, 371.

Estimated average time per response per institution: Initial notice, 80 hours; annual notice and change in terms, 8 hours; opt-out notice, 8 hours.

Estimated subtotal annual burden hours for institutions: 28,088 hours.

Estimated annual number of consumer respondents: 481,950.

Estimated average time per consumer response: 30 minutes.

Estimated subtotal annual burden hours for consumers: 240,975 hours.

Estimated total annual burden hours: 269,063 hours.

Board:

Estimated annual number of institution respondents: Initial notice, 1,311; annual notice and change in terms, 6,692; opt-out notice, 1,197.

Estimated average time per response per institution: Initial notice, 80 hours; annual notice and change in terms, 8 hours; opt-out notice, 8 hours.

Estimated subtotal annual burden hours for institutions: 167,992 hours.

Estimated annual number of consumer respondents: 402,675.

Estimated average time per consumer response: 30 minutes.

Estimated subtotal annual burden hours for consumers: 201,338 hours.

Estimated total annual burden hours: 369,330 hours.

FDIC:

Estimated annual number of institution respondents: Initial notice, 208; annual notice and change in terms, 5,138; opt-out notice, 873.

Estimated average time per response per institution: Initial notice, 80 hours; annual notice and change in terms, 8 hours; opt-out notice, 8 hours.

Estimated subtotal annual burden hours for institutions: 64,728 hours.

Estimated annual number of consumer respondents: 223,475.

Estimated average time per consumer response: 30 minutes.

Estimated subtotal annual burden hours for consumers: 111,738 hours.

Estimated total annual burden hours: 176,466 hours.

OTS:

Estimated annual number of institution respondents: Initial notice,

25; annual notice and change in terms, 949; opt-out notice, 182.

Estimated average time per response per institution: Initial notice, 80 hours; annual notice and change in terms, 8 hours; opt-out notice, 8 hours.

Estimated subtotal annual burden hours for institutions: 11,048 hours.

Estimated annual number of consumer respondents: 67,550.

Estimated average time per consumer response: 30 minutes.

Estimated subtotal annual burden hours for consumers: 33,775 hours.

Estimated total annual burden hours: 44,823.

Dated: August 6, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, July 22, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 21st day of July, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: August 7, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–20698 Filed 8–13–03; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6741–01–P; 6720–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 2000–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Ruling 2000–33, Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

DATES: Written comments should be received on or before October 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

OMB Number: 1545–1695.

Revenue Ruling Number: Revenue Ruling Ruling 2000–33.

Abstract: Revenue 2000–33 specifies the conditions the plan sponsor should meet to automatically defer a certain percentage of its employees' compensation into their accounts in an eligible deferred compensation plan.

Current Actions: There are no changes being made to this revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-Profit institutions, and State, local, or Tribal governments.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 30, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–20783 Filed 8–13–03; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–246249–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–246249–96 (TD 9010), Information Reporting Requirements for Certain Payments Made on Behalf of Another Person, Payments to Joint Payees, and Payments of Gross Proceeds From Sales Involving Investment Advisers (sections 1.6041–1 and 1.6045–1).

DATES: Written comments should be received on or before October 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or

through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Reporting Requirements for Certain Payments Made on Behalf of Another Person, Payments to Joint Payees, and Payments of Gross Proceeds From Sales Involving Investment Advisers.

OMB Number: 1545–1705.

Regulation Project Number: REG–246249–96.

Abstract: This regulation under section 6041 clarifies who is the payee for information reporting purposes if a check or other instrument is made payable to joint payees, provides information reporting requirements for escrow agents and other persons making payments on behalf of another person, and clarifies that the amount to be reported as paid is the gross amount of the payment. The regulation also removes investment advisers from the list of exempt recipients for information reporting purposes under section 6045.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The estimate of the reporting burden in section 1.6041–1 is reflected in the burden of Form 1099–MISC. The estimate of the reporting burden in section 1.6045–1 is reflected in the burden of Form 1099–B.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide Information.

Approved: August 8, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–20784 Filed 8–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–33, Electronic Federal Tax Payment System (EFTPS).

DATES: Written comments should be received on or before October 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Electronic Federal Tax Payment System (EFTPS).

OMB Number: 1545–1546.

Revenue Procedure Number: Revenue Procedure 97–33.

Abstract: The Electronic Federal Tax Payment System (EFTPS) is an electronic remittance processing system for making federal tax deposits (FTDs) and federal tax payments (FTPs). Revenue Procedure 97–33 provides taxpayers with information and procedures that will help them to electronically make FTDs and tax payments through EFTPS.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 557,243.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 278,622.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 8, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–20785 Filed 8–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0017]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to carry out a Congressional mandate that VA maintain supervision of the distribution and use of VA benefits paid to a fiduciary on behalf of a beneficiary who is incompetent, a minor, or under legal disability and to verify beneficiaries' deposits remaining at a financial institution against a fiduciary's accounting.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 14, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0017'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles and Form Numbers

a. Court Appointed Fiduciary's Account (Letter Size), VA Form 21–4706.

b. Federal Fiduciary for Amounts, VA Form 21–4706b.

c. Court Appointed Fiduciary's Account, VA Form 21–4706c.

d. Account Book, VA Form 21–4718.

e. Certificate of Balance on Deposit and Authorization to Disclose Financial Records (Pursuant to title 38, U.S.C., Chapter 55 and Title 12, U.S.C., Chapter 35), VA Form 27–4718a.

OMB Control Number: 2900–0017.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Forms 21–4706, 4706b and 4706c are used by estate to determine proper usage of benefits paid to fiduciaries. The 21–4706 and 21–4706b are both necessary to conform to requirement of various state courts.

b. VA Form 21–4718 is provided to VA fiduciaries to submit accountings to either State courts or the VA. It is not a reporting form per se, but a vehicle to assist the fiduciary in accurately maintaining records of monies received and spent.

c. VA Form 21–4718a—Fiduciaries are required to obtain certifications that the balances remaining on deposit in financial institutions as shown on accountings are correct. The form is completed by a certifying official at a financial institution who must affix the institution's official seal or stamp. Analysts review the information provided on the form when they are auditing accounting to determine the veracity of the information supplied by fiduciaries' accounting. The analysts compare the financial institution's information on the form against the fiduciary's accounting. The purpose is to prevent fiduciaries from supplying false certification, embezzling funds, and to possibly prevent and/or identify fraud, waste and abuse of government funds paid to fiduciaries on behalf of VA beneficiaries.

Affected Public: Individuals and households, businesses or other for-profit, not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden

a. VA Form 21–4706—500 hours.

b. VA Form 21–4706b—4,500 hours.

c. VA Form 21–4706c—1,500 hours.

d. VA Form 21–4718—12,500 hours.

e. VA Form 21–4718a—1,250 hours.

Estimated Average Burden Per Respondent

a. VA Form 21–4706—30 minutes.

b. VA Form 21–4706b—27 minutes.

c. VA Form 21–4706c—30 minutes.

d. VA Form 21–4718—2½ hours.

e. VA Form 21–4718a—3 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents

a. VA Form 21–4706—1,000.

b. VA Form 21–4706b—10,000.

c. VA Form 21–4706c—3,000.

d. VA Form 21–4718—5,000.

e. VA Form 21–4718a—25,000.

Dated: July 29, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–20763 Filed 8–13–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Notice of Availability of Report

In compliance with section 13 of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that the Report of the Department of Veterans Affairs Advisory Committee on Cemeteries and Memorials for Fiscal Years 2001–2002 has been issued. The Report summarizes activities and recommendations of the Committee on matters relative to programs, policies, and goals of the National Cemetery Administration. It is available for public inspection at two locations: Mr. Richard Yarnall, Federal Advisory Committee Desk, Library of Congress, Anglo-American Acquisition Division, Government Documents Section, Room LM–B42, 101 Independence Avenue, SE., Washington, DC 20540–4172; and, Department of Veterans Affairs, National Cemetery Administration, Suite 400, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: August 1, 2003.

By Direction of the Secretary

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 03–20734 Filed 8–13–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 157

Thursday, August 14, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Raritan and Sandy Hook Bay, Combined Erosion and Storm Damage Reduction Project, Borough of Highlands, Monmouth County, NJ

Correction

In notice document 03–20265 beginning on page 47299 in the issue of Friday, August 8, 2003, make the following correction:

On page 47300, in the first column, in the first full paragraph, in the third line from the bottom, ''1966'' should read ''1996''.

[FR Doc. C3–20265 Filed 8–13–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
August 14, 2003

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB29

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of public hearings; close of comment period; request for data.

SUMMARY: This proposed rule would: Revise the existing diesel particulate matter (DPM) interim concentration limit measured by total carbon (TC) to a comparable permissible exposure limit (PEL) measured by elemental carbon (EC) which renders a more accurate DPM exposure measurement; increase flexibility of compliance by requiring MSHA's longstanding hierarchy of controls for its other exposure-based health standards at metal and nonmetal mines, but prohibit rotation of miners for compliance; allow MSHA to consider economic as well as technological feasibility in determining if operators qualify for an extension of time in which to meet the DPM limits; and simplify requirements for a DPM control plan. The proposed rule would also make conforming changes to existing provisions concerning compliance determinations, environmental monitoring and recordkeeping.

The existing final rule pertaining to ''Diesel Particular Matter Exposure of Underground Metal and Nonmetal Miners,'' was published in the **Federal Register** on January 19, 2001 (66 FR 5706, RIN 1219–AB11) and amended on February 27, 2002 (67 FR 9180). This rulemaking is part of a settlement agreement reached in response to a legal challenge to the January 19, 2001 diesel particular matter (DPM) standard.

Specifically in this proposal, MSHA intends to revise existing § 57.5060(a), limit on concentration of DPM; including designating elemental carbon as an appropriate surrogate for measuring the interim DPM limit; § 57.5060(c), addressing application and approval requirements for an extension of time in which to reduce the concentration of DPM; § 57.5060(d), addressing certain exceptions to the concentration limits; § 57.5060(e), prohibiting use of personal protective equipment to comply with the concentration limits; § 57.5060(f) prohibiting use of administrative controls to comply with the concentration limits, and § 57.5062, addressing the diesel particulate control plan. Also, MSHA intends to make conforming changes in this rulemaking to existing § 57.5061, addressing compliance determinations; § 57.5071, addressing exposure monitoring; and § 57.5075, addressing recordkeeping requirements.

MSHA has incorporated into the record of this rulemaking the existing rulemaking record, including the risk assessment to the January 19, 2001 standard. Commenters are encouraged to submit additional evidence of new scientific data related to the health risk to underground metal and nonmetal miners from exposure to DPM.

MSHA encourages mine operators to submit information in response to these provisions, including their current experiences with controlling miners' exposures to DPM.

In addition, under the terms of the settlement agreement, MSHA agreed to propose to change the existing DPM surrogate from total carbon to elemental carbon for both the interim DPM limit currently in effect and the final DPM limit that is applicable after January 19, 2006. In the Agency's Advance Notice of Proposed Rulemaking published on September 25, 2002 (67 FR 60199), MSHA notified the mining community that this rulemaking would revise both the interim concentration limit of 400 micrograms per cubic meter of air and the final concentration limit of 160 micrograms per cubic meter of air under § 57.5060 (a) and (b) of the existing standard. Some commenters to the ANPRM recommended that MSHA propose separate rulemakings for revising the interim and final DPM limits to give MSHA an opportunity to gather further information to establish a final DPM limit. The Agency agrees, and solicits information that would lead to an appropriate final DPM standard. The Agency will propose a separate rulemaking to amend the existing final concentration limit in the near future. With regard to the final DPM limit of 160 micrograms, MSHA requests comments on an appropriate final DPM limit.

DATES: All comments on the proposed rule, including post-hearing comments, must be received by October 14, 2003. The public hearing dates and locations are listed in the Public Hearings section under **SUPPLEMENTARY INFORMATION.** Individuals or organizations wishing to make oral presentations for the record should submit a request at least 5 days prior to the hearing dates.

ADDRESSES: Comments must be clearly identified as such and may be transmitted electronically to *comments@msha.gov,* by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. We intend to post comments on our website shortly after they are received.

Information Collection Requirements: Comments concerning information collection requirements must be clearly identified as such and sent to both MSHA and the Office of Management and Budget (OMB) as follows:

(1) Send information collection comments to MSHA at the addresses above.

(2) Send comments to OMB by regular mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939, *Nichols-Marvin@msha.gov,* (202) 693–9440 (telephone), or (202) 693–9441 (facsimile).

You can access this proposed rule and the Preliminary Regulatory Economic Analysis (PREA) at *http://www.msha.gov.* You can obtain these documents in alternative formats, such as large print and electronic files, by contacting MSHA.

SUPPLEMENTARY INFORMATION:

I. Public Hearings

The public hearings will begin at 9 a.m. and will end after the last scheduled speaker testifies. The hearings will be held on the following dates at the locations indicated:

Date	Location	Telephone
September 16, 2003	University Park Marriott, 480 Wakara Way, Salt Lake City, UT 84108.	(801) 581–1000

Date	Location	Telephone
September 18, 2003	Renaissance St. Louis Hotel Airport, 9801 Natural Bridge Road, St. Louis, MO 63134.	(314) 429–1100
September 23, 2003	Hilton Pittsburgh, 600 Commonwealth Place, Pittsburgh, PA 15222.	(412) 391–4600

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. You do not have to make a written request to speak. Speakers will speak in the order that they sign in. Any unallotted time will be made available for persons making same-day requests. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

A verbatim transcript of the proceedings will be included in the rulemaking record. Copies of this transcript will be available to the public, and can be viewed at *http://www.msha.gov.*

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements, prior to the close of the comment period on October 7, 2003.

II. Background

On January 19, 2001, MSHA published a final rule addressing diesel particulate matter exposure in underground metal and nonmetal mines (66 FR 5706, amended on February 27, 2002 at 67 FR 9180). The final rule established new health standards for underground metal and nonmetal mines that use equipment powered by diesel engines. The effective date of the rule was listed as March 20, 2001. On January 29, 2001, AngloGold (Jerritt Canyon) Corp. and Kennecott Greens Creek Mining Company filed a petition for review of the final rule in the District of Columbia Circuit Court of Appeals. On February 7, 2001, the Georgia Mining Association, the National Mining Association, the Salt Institute, and the Methane Awareness Resource Group (MARG) Diesel Coalition filed a similar petition in the Eleventh Circuit. On March 14, 2001, Getchell Gold Corporation petitioned for review of the rule in the District of Columbia Circuit. The three petitions were consolidated and are pending in the District of Columbia Circuit. The United Steelworkers of America (USWA) intervened in the litigation.

While these challenges were pending, the AngloGold petitioners filed with MSHA an application for reconsideration and amendment of the final rule and to postpone the effective date of the final rule pending judicial review. The Georgia Mining petitioners similarly filed with MSHA a request for an administrative stay or postponement of the effective date of the rule. On March 15, 2001, MSHA delayed the effective date of the rule until May 21, 2001, in accordance with a January 20, 2001 memorandum from the President's Chief of Staff (66 FR 15032). The delay was necessary to give Department of Labor officials the opportunity for further review and consideration of new regulations. On May 21, 2001 (66 FR 27863), MSHA published a notice in the **Federal Register** delaying the effective date of the final rule until July 5, 2001. The purpose of this delay was to allow the Department of Labor the opportunity to engage in further negotiations to settle the legal challenges to this rule.

First Partial Settlement Agreement

As a result of a partial settlement agreement with the litigants, MSHA published two documents in the **Federal Register** on July 5, 2001 addressing the January 19, 2001 DPM rule. One document (66 FR 35518) delayed the effective date of § 57.5066(b) regarding the tagging provision of the maintenance standard; clarified the effective dates of certain provisions of the final rule; and included correction amendments.

The second document (67 FR 35521) proposed a rule to clarify §§ 57.5066(b)(1) and (b)(2) regarding maintenance and to add a new subparagraph (b)(3) to § 57.5067 regarding the transfer of existing equipment between underground mines. MSHA published these changes as a final rule on February 27, 2002 (67 FR 9180), with an effective date of March 29, 2002.

Under the first partial settlement agreement, MSHA also conducted joint sampling with industry and labor at 31 underground metal and nonmetal mines to determine existing concentration levels of DPM; to assess the performance of the SKC submicron dust sampler with the NIOSH Method 5040; to assess the feasibility of achieving compliance with the standard's concentration limits at the 31 mines; and to assess the impact of interferences on samples collected in the metal and nonmetal underground mining environment before the limits established in the final rule become effective. The final report was issued on January 6, 2003.

Second Partial Settlement Agreement

Settlement negotiations continued on the remaining unresolved issues in the litigation. On July 15, 2002, the parties signed an agreement that is the basis for this proposed rule. On July 18, 2002, MSHA published a notice in the **Federal Register** (67 FR 47296) announcing that the following provisions of the January 19, 2001 rule would become effective on July 20, 2002:

(a) § 57.5060(a), addressing the interim concentration limit of 400 micrograms of total carbon per cubic meter of air;

(b) § 57.5061, compliance determinations; and

(c) § 57.5071, environmental monitoring.

The notice also announced that the following provisions of the rule would continue in effect:

(a) § 57.5065, Fueling practices;

(b) § 57.5066, Maintenance standards;

(c) § 57.5067, Engines;

(d) § 57.5070, Miner training; and

(e) § 57.5075, Diesel particulate records, as they relate to the requirements of the rule that are in effect on July 20, 2002.

The notice also stayed the effectiveness of the following provisions pending completion of rulemaking:

(a) § 57.5060(d), permitting miners to work in areas where the level of diesel particulate matter exceeds the applicable concentration limit with advance approval from the Secretary;

(b) § 57.5060(e), prohibiting the use of personal protective equipment to comply with the concentration limits;

(c) § 57.5060(f) prohibiting the use of administrative controls to comply with the concentration limits; and

(d) § 57.5062, DPM control plan.

Finally, the notice outlined the terms of the DPM settlement agreement and announced MSHA's intent to propose specific changes to the rule, as discussed below.

On September 25, 2002, MSHA published an Advance Notice of Proposed Rulemaking (67 FR 60199) to revise the DPM rule. The comment period closed on November 25, 2002. MSHA received comments from underground metal and nonmetal mine operators, trade associations, organized labor, individual mine operators, public interest groups and individuals. A number of commenters from industry and labor requested that MSHA propose the final DPM limit at a later date to allow MSHA to obtain more data. Commenters suggested that the Agency needs to determine the efficiency of different filtration devices, the relationship between elemental carbon and total carbon, and the feasibility of a DPM exposure limit.

This proposed rule would revise existing § 57.5060(a), addressing the interim concentration limit for DPM and the surrogate for measuring DPM limit; § 57.5060(c), addressing application and approval requirements for an extension of time in which to reduce the concentration of DPM; § 57.5060(d), addressing certain exceptions to the concentration limit; § 57.5060(e), prohibiting use of personal protective equipment to comply with the concentration limits; § 57.5060(f) prohibiting use of administrative controls to comply with the concentration limits, and § 57.5062, addressing the diesel particulate control plan. MSHA is also proposing conforming changes to existing § 57.5061, addressing compliance determinations; § 57.5071, addressing exposure monitoring; and § 57.5075, addressing recordkeeping requirements.

MSHA solicits comments on these provisions, as well as on experiences with controlling miners' exposures to DPM. MSHA also encourages commenters to submit additional evidence or new scientific data related to the health risk of DPM exposure in underground metal and nonmetal mines.

III. The Final PEL

MSHA intends to propose a revision to the final DPM limit in § 57.5060(b) that would reflect an appropriate permissible exposure limit rather than a concentration limit and would change the surrogate from total carbon to elemental carbon. Although the final limit is not a part of this proposed rule, MSHA solicits comments on an appropriate final DPM limit.

IV. Executive Summary of the 31-Mine Study

The following is the executive summary from ''MSHA's Report on Data Collected During a Joint MSHA/Industry Study of DPM Levels in Underground Metal And Nonmetal Mines'' (31-Mine Study) signed by MSHA on January 6, 2003. The Preliminary Regulatory Economic Analysis (PREA) for this proposed rule is not based on the 31-Mine Study.

On January 19, 2001, MSHA published a final standard on exposure of underground metal and nonmetal miners to diesel particulate matter (DPM). The rule was to become effective 60 days later, however, prior to the effective date, the rule was challenged by industry trade associations and mining companies. The United Steelworkers of America (USWA) also intervened in the litigation. In June 2001, agreement was reached on some of the issues in dispute. The parties further agreed to conduct a study involving joint in-mine DPM sampling to determine existing concentration levels of DPM in operating mines and to measure DPM levels in the presence of known or suspected interferences. The goals of the study were to use the sampling results and related information to assess:

—The validity, precision and feasibility of the sampling and analysis method specified by the diesel standard (NIOSH Method 5040);

—The magnitude of interferences that occur when conducting enforcement sampling for total carbon as a surrogate for diesel particulate matter (DPM) in mining environments; and

—The technological and economic feasibility of the underground metal and nonmetal (MNM) mine operators to achieve compliance with the interim and final DPM concentration limits.

The parties developed a joint MSHA/Industry study protocol to guide sampling and analysis of DPM levels in 31 mines. The parties also developed four subprotocols to guide investigations of the known or suspected interferences, which included mineral dust, drill oil mist, oil mist generated during ammonium nitrate/fuel oil (ANFO) loading operations, and environmental tobacco smoke (ETS). The parties also agreed to study other potential sampling problems, including any manufacturing defects of the DPM sampling cassette.

Major conclusions drawn from the study are as follows:

—The analytical method specified by the diesel standard gives an accurate measure of the TC content of a filter sample and the analytical method is appropriate for making compliance determinations of DPM exposures of underground metal and nonmetal miners.

—SKC satisfactorily addressed concerns over defects in the DPM sampling cassettes and availability of cassettes to both MSHA and mine operators.

—Compliance with both the interim and final concentration limits may be both technologically and economically feasible for metal and nonmetal underground mines in the study. MSHA, however, has limited in-mine documentation on DPM control technology. As a result, MSHA's position on feasibility does not reflect consideration of current complications with respect to implementation of controls, such as retrofitting and regeneration of filters. MSHA acknowledges that these issues may influence the extent to which controls are feasible. The Agency is continuing to consult with the National Institute of Occupational Safety and Health, industry and labor representatives on the availability of practical mine worthy filter technology.

—The submicron impactor was effective in removing the mineral dust, and therefore its potential interference, from DPM samples. Remaining interference from carbonate interference is removed by subtracting the 4th organic peak from the analysis. No reasonable method of sampling was found to eliminate interferences from oil mist or that would effectively measure DPM levels in the presence of ETS with TC as the surrogate. Results and findings of the study are summarized below.

Sampling at 31 Mines

There are a number of methods that can measure DPM concentrations with reasonable accuracy when it is at high concentrations and the purpose is exposure assessment. These methods do not at this time provide the accuracy required to support compliance determinations at the concentration levels required to be achieved under the DPM rule. The NIOSH Method 5040 provides an accurate method of determining the total carbon content of a sample collected in any underground metal or nonmetal mine when the submicron impactor is used. MSHA's January 2001 regulation requires using total carbon (TC) as a surrogate for DPM because a consistent quantitative relationship has been established between total carbon concentrations and the concentration of DPM as a whole. TC concentrations measured during the study ranged from 13 to 2065 μ/m^3, with a mean of 345 μ/m^3. To put these sampling results into context, the interim concentration limit specified in the final rule, effective after July 19, 2002, is 400 micrograms of TC per cubic meter of air (μ/m^3). The final concentration limit is 160 micrograms of TC per cubic meter of air (μ/m^3), effective after January 19, 2006.

TC concentrations at the non-trona mines were four to five times higher than at the trona mines. TC concentrations measured using area samples were found to be 38 to 62 percent of the levels found using occupational or personal samples.

Interferences

The submicron impactor removes 94% of the mineral dust from DPM samples. Remaining carbonate interference, if any, is removed by subtracting the 4th organic peak

from the analysis. For typical gold mine samples, the interference from elemental carbon (graphite) would be less than 1.5 μ/m³. The use of the impactor also eliminates the need to acidify samples, including samples from trona mines. For typical non-acidified trona mine samples, the interference from bicarbonate would be less than 0.5 μ/m³. Overload of particulate matter on the impactor substrate to the filter was not observed.

Interference from drill oil mist was found on personal samples collected on the drillers and on area samples collected in the stope where drilling was being performed. Use of a dynamic blank did not eliminate drill oil mist interference. Tests to confirm whether oil mist from ANFO loading operations could be interference were not conclusive. Blasting did not interfere with diesel particulate measurements. MSHA found no reasonable method of sampling to eliminate interferences from oil mist when TC is used as the surrogate.

No reliable marker was identified for confirming the presence of ETS in an atmosphere containing DPM. Use of the impactor does not remove the ETS as an interferent. No reasonable method of sampling was found that would effectively measure DPM levels in the presence of ETS with TC as the surrogate.

Laboratory Analytical Procedures and Sampling Cassettes

Intra- and inter-laboratory analytical imprecision appear to be in line with other airborne contaminants monitored by MSHA and other regulatory agencies. Each of the samples collected in the study was analyzed twice for TC content. To do this, two standard punches were taken from each exposed and each unexposed (*i.e.*, control) filter. One punch was always analyzed using the same instrument in MSHA's laboratory. The second punch from the same filter was either analyzed in MSHA's laboratory using one of two different instruments or sent out to one of three other laboratories, NIOSH, Natlsco or Clayton.

The supplier has satisfactorily addressed concerns over possible manufacturing defects in the specialized SKC DPM sampling cassette. MSHA believes that the performance of this cassette will be adequate for compliance sampling purposes.

Technological Feasibility

Technological feasibility for mine operators to achieve compliance with the interim and final DPM concentration limits was assessed for the 31 mines in the study on a mine-by-mine basis using a computerized Microsoft® 7 Excel spreadsheet program called the Estimator, combined with sampling results from the 31 mines. The Estimator mathematically calculates the effect of any combination of engineering and ventilation controls on existing DPM concentrations in a given production area of a mine. The analyses were based on the highest DPM sample result obtained at each mine and all major DPM emission sources at each mine plus spare equipment.

MSHA, however, has limited in-mine documentation on DPM control technology. Moreover, these sampling results were obtained at a time that few mine operators had implemented controls to reduce DPM concentrations at the subject mines. As a result, MSHA's position on feasibility does not reflect consideration of current complications with respect to implementation of controls, such as retrofitting and regeneration of filters. MSHA acknowledges that these issues may influence the extent to which controls are feasible. The Agency is continuing to consult with the National Institute of Occupational Safety and Health, industry and labor representatives on the availability of practical mine worthy filter technology.

The study found that five mines were already in compliance with the interim concentration limit, and another two mines were already in compliance with the lower, final concentration limit. The Estimator predicted that eleven of the 31 mines could achieve compliance with both limits through installation of DPM filters alone. Ventilation upgrades were specified for only 5 of the 31 mines in this study, and then only to achieve the final concentration limit.

The Estimator predicted that compliance with the interim and final concentration limits would be possible without requiring major ventilation installations (new main fan, repowering main fan, etc.) or requiring environmental cabs as a means of controlling DPM at any of the 31 mines. Industry commenters questioned whether practical mine-worthy filters were available for all engine sizes and whether more expensive controls would be necessary.

Economic Feasibility

Yearly costs for complying with both the interim and final concentration limits were determined for each of the 31 mines in the study. Cost estimates included the purchase cost of DPM controls specified for that mine in the technological feasibility assessment, plus related installation and operating costs. The aggregate yearly cost for all 31 mines to comply with the interim limit was estimated to be $2.1 million. Compliance with the final limit was estimated to cost an additional $1.1 million (in 2002 dollars). The yearly total to comply with both the interim and final concentration limits was estimated to be $3.2 million. The estimated costs in this report are based on the accuracy of the Estimator as reported in Appendix A, and therefore, do not include consideration of current implementation complications that could increase compliance costs.

MSHA concludes that a regulation is economically infeasible if it would threaten an industry's viability or competitive structure. In rulemaking, economic feasibility, as well as technological feasibility, is not defined for individual firms, but for an industry. As a screening device, MSHA has historically questioned economic feasibility if yearly compliance costs equal or exceed one percent of an industry's annual revenues.

MSHA developed a rough estimate of annual mine revenues using each mine's annual employee work hours and the production value per employee hour for the commodity produced. Summing the individual revenue figures resulted in an estimate of total revenues for the 31 mines in the study of $1.8 billion in 2000.

On this basis, MSHA estimates that the 31 mines in the study would incur yearly costs equal to 0.12 percent of their annual revenues to comply with the interim concentration limit and additional yearly costs equal to 0.06 percent of their annual revenues to comply with the final concentration limit. To comply with both the interim and final concentration limits, the 31 mines would incur yearly costs equal to 0.18 percent of their annual revenues. Since estimated yearly compliance costs are less than the screening benchmark of one percent or more of annual revenues, the data in this report supports a finding that the interim and final concentration limits are economically feasible. Industry questions whether all costs for active filter regeneration were considered and whether the proper controls (that is, filters) were used in the cost analysis. In particular, industry questions whether compliance with the interim concentration limit would require some mine operators to make major ventilation upgrades in their mines.

V. Compliance Assistance

A. Baseline Sampling Summary

Under the DPM Settlement Agreement, MSHA agreed to provide compliance assistance to the metal and nonmetal underground mining industry for a one-year period from July 20, 2002 through July 19, 2003. As part of MSHA's compliance assistance activities, the Agency conducted baseline sampling of miners' personal exposures at every underground mine covered by the existing regulation. The results of this sampling were used by MSHA in this preamble to estimate current DPM exposure levels in these mines. These sampling results also assist mine operators in developing compliance strategies based on actual exposure levels. This compliance assistance sampling began in October 2002.

This section summarizes the analytical results of 885 personal DPM samples collected from 171 mines between October 30, 2002 and March 26, 2003 as part of a compliance assistance initiative. Eleven of the 885 samples were invalid samples due to abnormal sample deposits, broken cassettes or filters, contaminated backup pads, or instrument or pump failure. Table V–1 lists the frequencies of invalid samples within each commodity.

The mines that were sampled produce clay, sand, gypsum, copper, gold, platinum, silver, gem stones, dimension marble, granite, lead-zinc, limestone, lime, potash, molybdenum, salt, trona, and other miscellaneous metal ores. These commodities were grouped into

four general categories for calculating summary statistics: metal, stone, trona, and other nonmetal (N/M) mines. These categories were selected to be consistent with the categories used for analysis of data for the 31-Mine Study. Most commodities are well represented in this analysis (average of 5.1 samples per mine). Some of these mines, such as the gold mines, have an average of only 2.0 samples per mine. MSHA is conducting additional compliance assistance sampling at these mines, however, the results are not available for inclusion in this analysis. Table V–2 lists the number of samples for each category of commodity.

MSHA used the same sampling strategies for collecting baseline samples as it intends to use for collecting samples for enforcement purposes. These sampling procedures are described in the *Metal and Nonmetal Health Inspection Procedures Handbook (PH90-IV–4),* Chapter A, ''Compliance Sampling Procedures'' and Draft Chapter T, ''Diesel Particulate Matter Sampling.'' Chapter A includes detailed guidelines for selecting and obtaining personal samples for various contaminants. All personal samples were collected for the miner's full-shift regardless of the number of hours worked, and in the miner's breathing zone. For the 874 valid personal samples, 83% were collected for at least eight hours. Total and elemental carbon levels, as well as DPM levels, are reported in units of micrograms per cubic meter for an 8-hour full shift equivalent.

The equation used to calculate a 480-minute (8-hour) full shift equivalent (FSE) exposure of total carbon is Total Carbon Concentration =

$$\frac{[EC \times 1.3] \text{ or } [OC + EC]\left(\mu g/cm^2\right) \times A\left(cm^2\right) \times 1{,}000\left(L/m^3\right)}{\text{Flow Rate (Lpm)} \times 480 \text{ (minutes)}}$$

Where:

EC = The corrected elemental carbon concentration measured in the thermal/optical carbon analyzer

OC = The corrected organic carbon concentration measured in the thermal/optical carbon analyzer

A = The surface area of the deposit on the filter media used to collect the sample

Flow Rate = Flow rate of the air pump used to collect the sample measured in Liters per minute

480 minutes = Standardized eight-hour workshift

All levels of carbon or DPM are reported in 8-hour full shift equivalent (FSE) total carbon concentrations measured in $\mu g/m^3$.

Because personal sampling was conducted and no attempt was made to avoid interference from cigarette smoke or other organic carbon sources, total carbon was also calculated using the formula prescribed in the DPM settlement agreement:

Total Carbon Concentration = EC × 1.3.

MSHA agreed to use the lower of the two values (EC × 1.3 or EC + OC) for enforcement until a final rule is published reflecting EC as the surrogate.

MSHA collected DPM samples with SKC submicron dust samplers that use Dorr-Oliver cyclones and submicron impactors. The samples were analyzed either at MSHA's Pittsburgh Safety and Health Technology Center, Dust Division Laboratory or at the Clayton Laboratory using MSHA Method P–13 (NIOSH Analytical Method 5040, *NIOSH Manual of Analytical Methods (NMAM), Fourth Edition,* September 30, 1999) for determining the total carbon content. Each sample was analyzed for organic, elemental, and carbonaceous carbon and calculated total carbon. Raw analytical results from both laboratories as well as administrative information about the sample are stored electronically in MSHA's Laboratory Information Management System.

If a raw carbon result was greater than or equal to 30 $\mu g/cm^2$ of EC or 40 $\mu g/cm^2$ of TC from the exposed filter loading, then the analysis was repeated using a separate punch of the same filter. The results of these two analyses were then averaged. The companion dynamic blank was also tested for the same analytes. Otherwise, an unexposed filter from the same manufacturer's lot was used to correct for background levels. In the event the initial total carbon result was greater than 100_{EC} $\mu g/cm^2$, a smaller punch of the same exposed filter (in duplicate and corresponding blank) was taken and used in the analysis. Blank-corrected averaged results were used in the analysis when the sample was tested in duplicate.

Generally the lowest reporting limit is 3_{TC} $\mu g/cm^2$. However, for this analysis, MSHA used all results below this limit. Due to variations in the analytical method, three samples have blank corrected elemental carbon results slightly below 0_{EC} $\mu g/m^3$. This occurred because the corresponding blank filters have TC results slightly more than the exposed filter. Median values are not affected by the distribution of data and MSHA included them where appropriate.

The electronic records of the 885 samples that were available for analysis were reviewed for inconsistencies. Internally inconsistent or extreme values were questioned, researched, and verified. Although no samples were invalidated as a result of the administrative verification, eleven samples (1.2%) were removed from the data set for reasons unrelated to the values obtained. The reasons for invalidating these samples are listed in Table V–1. Accordingly, MSHA has included 874 samples from miners in the analyses. Table V–2 is a list of the number of valid samples by commodity.

TABLE V–1.—REASONS FOR EXCLUDING SAMPLES

Reason for excluding from analysis	Metal	Stone	Trona	Other N/M	Total
Abnormal Sample Deposit	0	1	0	0	1
Cassette/Filter Broken	0	2	0	1	3
Contaminated Backup Pad	1	0	0	0	1
Instrument Failure	1	1	0	0	2
Pump Failed	1	3	0	0	4
Total	3	7	0	1	11

TABLE V–2.—NUMBER OF MINES AND VALID SAMPLES, BY COMMODITY

Commodity	Number of mines	Number of valid samples	Average number of valid samples by mine
Metal	36	189	5.3
Stone	109	519	4.8
Trona	3	15	5.0
Other N/M	23	151	6.6
Total	171	874	5.1

Table V–3 lists the number of samples collected by specific commodities at the time the data set was compiled (March 26, 2003) and sorted by the average number of samples per mine. Although MSHA made efforts to sample all underground metal and nonmetal mines covered by this rulemaking within the specified time frame, several mines have few or no samples for DPM in this analysis. Some metal and nonmetal mining operations are seasonal in that they are operated intermittently or operate at less than full production during certain times. These types of variable production schedules limited efforts to collect compliance assistance samples. MSHA continued to collect baseline samples during the compliance assistance period, especially at those mines with a low sampling frequency or where no samples were collected as of March 26, 2003. Future analyses will incorporate all subsequent valid samples.

TABLE V–3.—NUMBER OF VALID SAMPLES PER MINE FOR SPECIFIC MINES

Specific commodity	Number of mines	Number of samples	Average samples per mine
GEMSTONES MINING, N.E.C.	1	2	2.0
GOLD ORE MINING, N.E.C.	17	34	2.0
DIMENSION MARBLE MINING	3	9	3.0
LIMESTONE	2	6	3.0
TALC MINING	1	3	3.0
CRUSHED & BROKEN MARBLE MINING	4	16	4.0
GYPSUM MINING	2	8	4.0
CRUSHED & BROKEN STONE MINING, N.E.C.	5	23	4.6
CRUSHED & BROKEN LIMESTONE MINING, N.E.C.	85	413	4.9
CLAY, CERAMIC & REFRACTORY MINERALS MINING, N.E.C.	1	5	5.0
CONSTRUCTION SAND & GRAVEL MINING, N.E.C.	1	5	5.0
COPPER ORE MINING, N.E.C.	1	5	5.0
CRUSHED & BROKEN SANDSTONE MINING	1	5	5.0
HYDRAULIC CEMENT	1	5	5.0
LIME, N.E.C.	4	20	5.0
TRONA MINING	3	15	5.0
DIMENSION LIMESTONE MINING	4	22	5.5
LEAD-ZINC ORE MINING, N.E.C.	10	70	7.0
SALT MINING	14	98	7.0
MISCELLANEOUS METAL ORE MINING, N.E.C.	1	9	9.0
MOLYBDENUM ORE MINING	2	19	9.5
PLATINUM GROUP ORE MINING	2	20	10.0
POTASH MINING	3	30	10.0
SILVER ORE MINING, N.E.C.	3	32	10.7
AVERAGE OF ALL SAMPLES	171	874	5.1

There are 63 different occupations in underground metal and nonmetal mines represented in this analysis. The most frequently sampled occupations are Blaster, Drill Operator, Front-end Loader Operator, Truck Driver, Scaling (Mechanical), and Mechanic. Table V–4 lists the number of valid samples by occupation and commodity. Only occupations with 14 or more samples are listed. Occupations with fewer samples were aggregated for this table.

TABLE V–4.—VALID SAMPLES, BY OCCUPATION AND MINE CATEGORY

Occupation	Metal	Stone	Trona	Other N/M	Total
Truck Driver	55	121	0	7	183
Front-end Loader Operator	23	115	4	13	155
Blaster, Powder Gang	9	72	0	19	100
Scaling (mechanical)	1	53	0	9	63
Drill Operator, Rotary	0	53	0	5	58
Mechanic	6	10	0	10	26

TABLE V–4.—VALID SAMPLES, BY OCCUPATION AND MINE CATEGORY—Continued

Occupation	Metal	Stone	Trona	Other N/M	Total
Drill Operator, Jumbo Perc.	4	9	0	8	21
Mucking Mach. Operator	15	0	0	3	18
Utility Man	5	3	8	2	18
Scaling (hand)	3	12	0	2	17
Complete Load-Haul-Dump	1	0	0	16	17
Roof Bolter, Rock	3	6	0	5	14
Drill Operator, Rotary Air	1	12	0	1	14
Crusher Oper/Worker	0	12	0	2	14
All Others Combined	63	41	3	49	156
Totals	189	519	15	151	874

TC levels calculated by EC × 1.3 were lower than TC levels calculated by OC + EC in 663 (76%) of the 874 baseline samples. Of the 211 samples where TC = OC + EC was the lower value, 64% of the TC = EC × 1.3 values were within 12% of the TC = OC + EC value. Table V–5 summarizes the results of the baseline samples when determining the TC level using either EC × 1.3 or OC + EC. Approximately 6.3% of results did not concur when measuring TC by the two calculations. Approximately 15.7% of the samples were above the 400_{TC} μg/m³ interim concentration limit when using TC = EC × 1.3 and approximately 19.5% were above the concentration limit when using TC = OC + EC. There is 93.7% concurrence between the two methods of calculating TC and comparing the calculations to the 400_{TC} μg/m³ interim concentration limit.

TABLE V–5.—COMPARISON OF RESULTS WITH 400_{TC} μg/m³ CALCULATING TC BY OC + EC OR EC × 1.3

All Valid Samples—OC + EC > 400 μg/m³	EC × 1.3 > 400 μg/m³		Total
	No	Yes	
No	693 (79.3%)	11 (1.3%)	704 (80.5%)
Yes	44 (5.0%)	126 (14.4%)	170 (19.5%)
Total	737 (84.3%)	137 (15.7%)	874 (100.0%)

Table V–6 lists the 19 occupations found to have at least one sample in which the level of TC was over the interim 400_{TC} μg/m³ concentration limit (TC = EC × 1.3). Table V–6 is sorted by the median TC result. The table also lists the minimum value, median value, and the total number of valid samples for these occupations. TC values varied widely among all miners' occupations.

TABLE V–6.—OCCUPATIONS WITH AT LEAST ONE SAMPLE GREATER THAN OR EQUAL TO 400_{TC} μg/m³

Occupation	Total samples	Minimum	Median	Maximum
Engineer	1	438	438	438
Roof Bolter, Mounted	8	98	335	588
Miner, Stope	11	165	330	622
Clean Up Man	2	66	283	499
Mucking Machine Operator	18	15	278	872
Shuttle Car, Diesel	2	95	257	419
Drill Operator, Rotary Air	14	56	231	1145
Belt Crew	8	26	225	502
Blaster, Powder Gang	101	6	216	960
Drill Operator, Jumbo	21	41	194	708
Complete Load-Haul-Dump	17	42	188	824
Miner, Drift	14	16	185	1459
Scaling (Hand)	17	18	166	2014
Roof Bolter, Rock	14	63	157	829
Truck Driver	184	0	155	1074
Front End Loader	155	0	136	1743
Drill Operator, Rotary	58	3	133	1109
Scaling (Mechanical)	63	0	131	750
Utility Man	18	29	93	638
Supervisor	10	1	87	856
Crusher Operator	14	1	47	427

Table V–7 and Chart V–1 provide the frequencies and percent of overexposures among the four commodities. Chart V–2 provides the frequency of overexposures among the commodities. The metal mines have the

highest percent of overexposures followed by stone than other N/M mines. All 15 samples collected in trona mines were less than 200_{TC} μg/m³. For all samples combined, 15.7% were above 400_{TC} μg/m³.

TABLE V–7.—BASELINE SAMPLES BY COMMODITY (TC=EC × 1.3)

Commodity	Number <400 μg/m³ TC	Number >400 μg/m³ TC	Total	Percent >400 μg/m³ TC
Metal	148	41	189	21.7
Stone	435	84	519	16.2
Other N/M	139	12	151	7.9
Trona	15	0	15	0.0
All Mines	737	137	874	15.7

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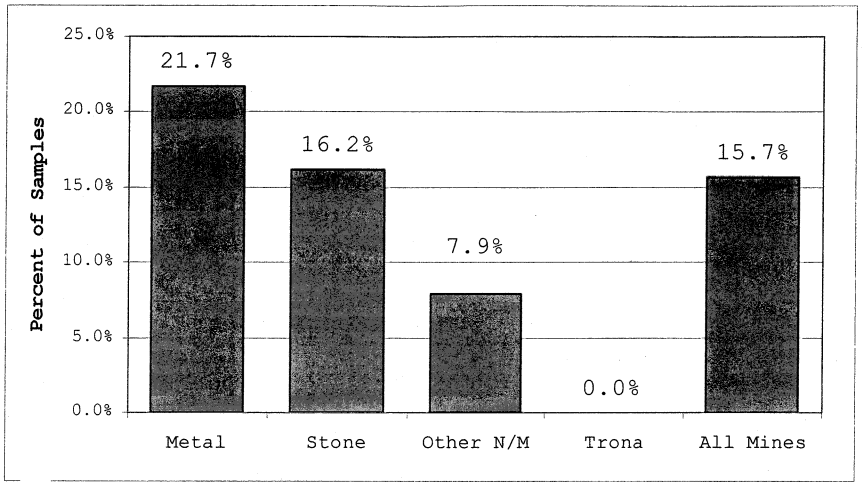

Chart V-1: Percent of Overexposures by Commodity (400_{TC} μg/m³, TC=EC x 1.3)

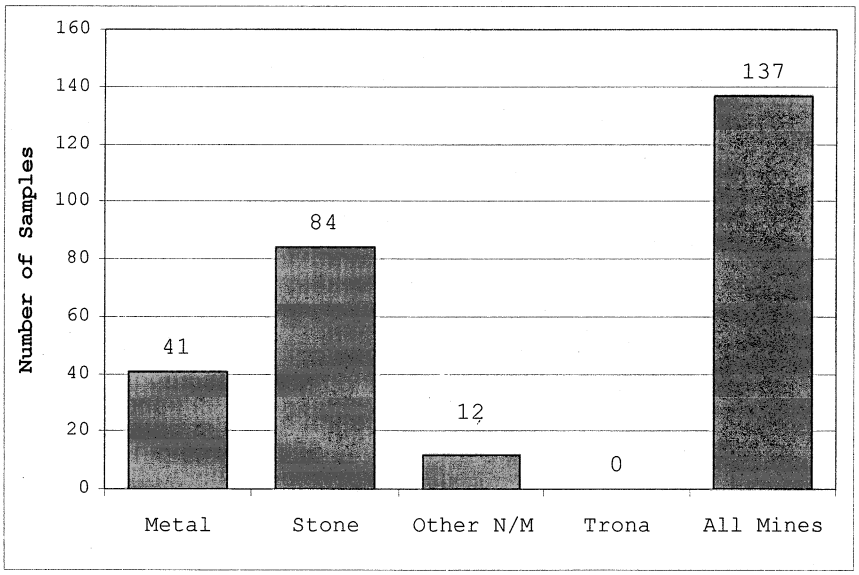

Chart V-2: Frequency of Overexposures by Commodity (400_{TC} μg/m³, TC=EC x 1.3)

Chart V–3 shows the number of mines with a specific number of overexposures. Examination of the frequency of mines with one or more overexposures shows that 51 (29.8%) mines are in this category.

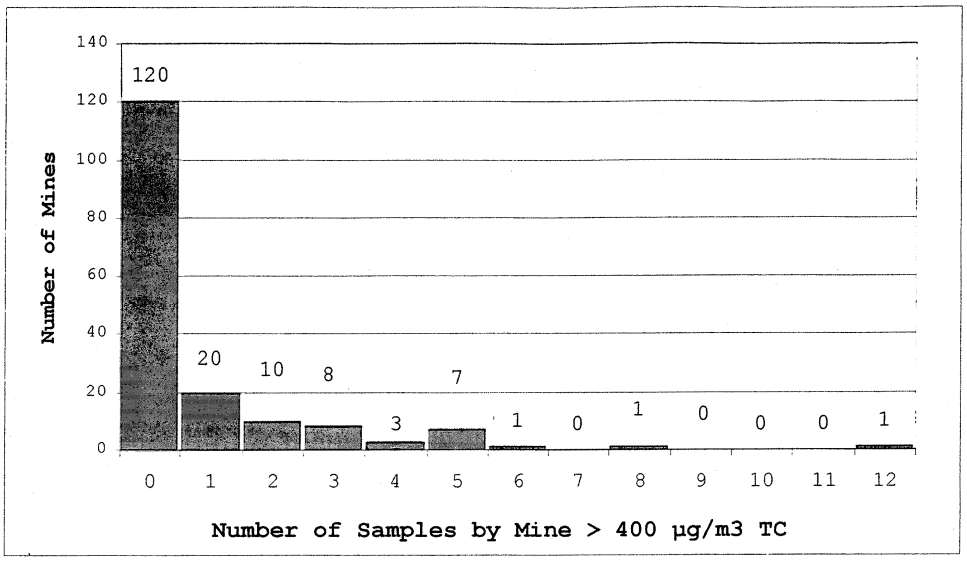

Chart V-3: Number of Mines by the Amount of Overexposures Samples for that Mine (TC=EC x 1.3)

At 14 of the mines, all the samples were above 400_{TC} µg/m³. Between one and five samples were taken at each of these mines. No overexposures were found in 120 (70%) of the mines sampled. (*See* Chart V–4.)

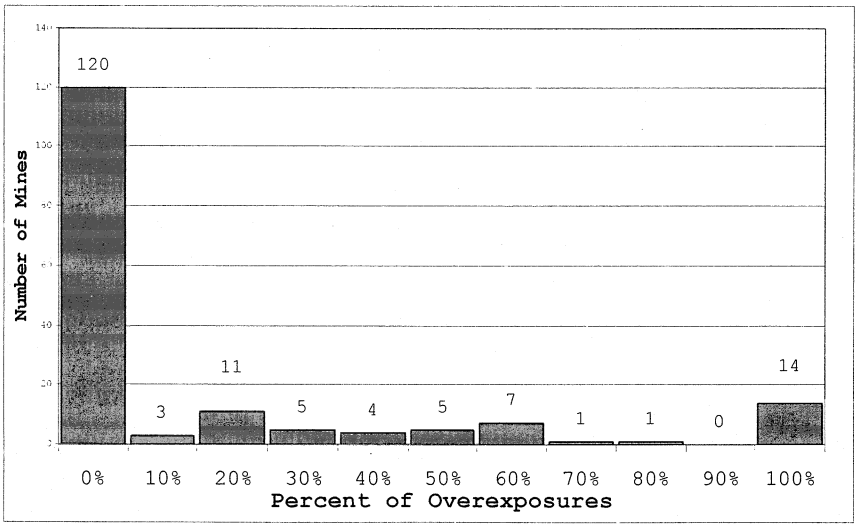

Chart V-4: Number of Mines by Percentage of Overexposures for that Mine

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Tables V–8 and V–9 summarize sample statistics by commodity for total carbon calculated by TC = EC × 1.3 and TC = EC + OC respectively. Overall, the mean TC as calculated by EC × 1.3 is 222 µg/m³. The median level is 153 µg/m³. The mean TC level by OC + EC is 263 µg/m³ and the median level is 209 µg/m³. Individual exposure levels of TC vary widely within all commodities and most mines. The statistics reported in Tables V–8 and V–9 were chosen to be consistent with those reported in the 31-Mine Study and the Exposure Assessment.

The mean TC values (EC × 1.3) are somewhat lower than the interim compliance limit of 400 µg/m³. The mean (median) TC value for metal mines is 296(239) µg/m³. The mean for stone is 214(136), other N/M is 170(129) and for trona mines is 90(91) µg/m³. Table V–8 lists additional statistics for EC values compiled by commodity.

TABLE V–8.—AVERAGE LEVELS OF TOTAL CARBON BY COMMODITY MEASURED IN μg/m³ (EC × 1.3)

[Estimated 8-hour Full Shift Equivalent TC Concentration (μg/m³)]

EC × 1.3	Metal	Stone	Other N/M	Trona	All mines
Number of Samples	189	519	151	15	874
Maximum	2,014	1,743	824	194	2,014
Median	239	136	129	91	153
Mean	296	214	170	90	222
Std. Error	19	10	11	13	8
95% CI Upper	333	233	191	119	236
95% CI Lower	258	195	148	62	207

The mean TC values as calculated by OC + EC are also somewhat lower than the interim compliance limit of 400 μg/m³. The mean (median) TC value for metal mines is 323(285) μg/m³. The mean for stone is 263(200), other N/M is 202(168) and for trona mines is 128(126) μg/m³. Table V–9 lists additional statistics for TC values compiled by commodity.

TABLE V–9.—AVERAGE LEVELS OF TOTAL CARBON BY COMMODITY MEASURED IN μg/m³ (OC + EC)

[Estimated 8-hour Full Shift Equivalent TC Concentration (μg/m³)]

OC + EC	Metal	Stone	Other N/M	Trona	All mines
Number of Samples	189	519	151	15	874
Maximum	1,742	1,559	740	218	1,742
Median	285	200	168	126	209
Mean	323	263	202	128	263
Std. Error	17	11	11	12	8
95% CI Upper	356	284	223	154	278
95% CI Lower	289	243	181	102	248

Tables V–10 and V–11 show total DPM exposures for the baseline and the 31-Mine Study. For baseline sampling DPM was calculated by EC × 1.3 × 1.25. The 1.25 factor represents the assumption that TC comprises 80 percent of DPM. Section VI–B–3 discusses the relationship between elemental and total carbon. The mean (median) value is 369(299) μg/m³ for metal mines, 267(170) for stone mines, 212(162) for other NM, and 113(113) μg/m³ for trona mines. The total DPM exposures for table V–11 were calculated as (OC + EC) × 1.25. The mean values from the baseline samples appear to be lower than the mean values obtained during the 31-Mine Study.

TABLE V–10.—BASELINE DPM CONCENTRATIONS (EC × 1.3 × 1.25, μg/m³), BY MINE CATEGORY

	Metal	Stone	Other N/M	Trona	All mines
Number of Samples	189	519	151	15	874
Maximum	2518	2178	1030	242	2518
Median	299	170	162	113	191
Mean	369	267	212	113	277
Std. Error	24	12	14	17	9
95% UCL	416	291	239	149	296
95% LCL	323	243	185	77	259

TABLE V–11.—BASELINE DPM CONCENTRATIONS ((EC + OC) × 1.25, μg/m³), BY MINE CATEGORY

	Metal	Stone	Other N/M	Trona	All mines
Number of Samples	189	519	151	15	874
Maximum	2177	1949	925	273	2177
Median	357	250	211	158	261
Mean	403	329	252	160	329
Std. Error	21	13	13	15	10
95% CI Upper	445	355	279	193	348
95% CI Lower	361	303	226	127	310

TABLE V–12.—31-MINE STUDY DPM CONCENTRATIONS (μg/m³), BY MINE CATEGORY

	Metal	Stone	Other N/M	Trona
Number of Samples	116	105	83	54
Maximum	2581	1845	1210	331
Median	491	331	341	82
Mean	610	466	359	94
Std. Error	45	36	27	9
95% CI Upper	699	537	412	113
95% CI Lower	522	394	306	75

Chart V–5 compares the means from Tables V–10, V–11 and V–12. The mines selected in the 31-Mine Study (Table V–12) were not randomly selected and is therefore not considered representative of the underground M/NM mining industry. Additionally the industry has continued to change the diesel-powered fleet to low emission engines that reduce diesel particulate matter exposure. Workers inside equipment cabs were not sampled during the 31-Mine Study due to possible interference from cigarette smoke. Personal samples taken inside cabs were not avoided during baseline compliance assistance sampling.

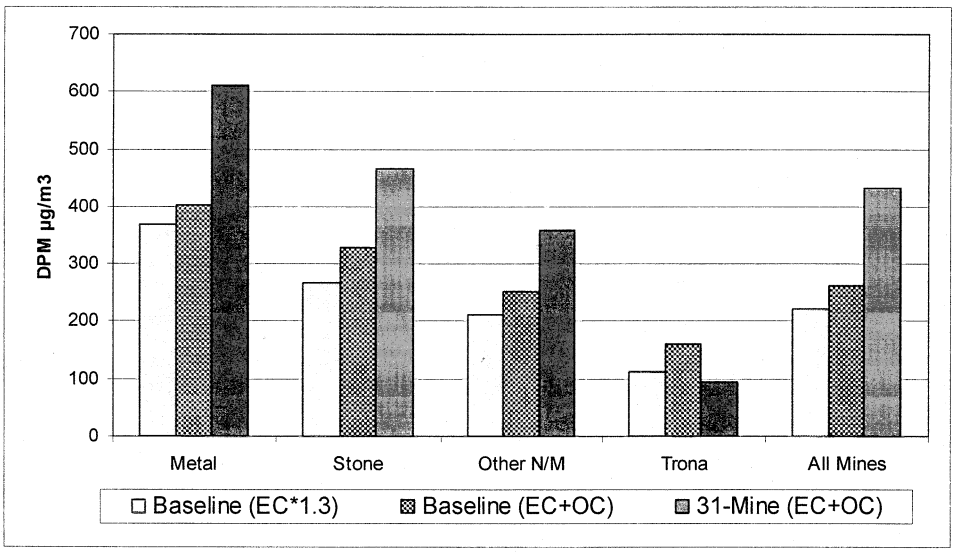

Chart V-5. Comparison of Mean DPM Levels from Baseline Sampling and the 31-Mine Study

B. DPM Control Technology

In addition to conducting baseline DPM sampling at underground metal and nonmetal mines, MSHA participated in a number of compliance assistance activities directed at improving sampling and assisting mine operators with selection and implementation of appropriate DPM control technology. Some of these activities were directed to a segment of, or the entire mining industry. Others were conducted on a mine specific basis. In general, those activities directed toward a large number of mines included outreach programs, workshops, Web site postings and publications. Those activities directed at an individual mine included evaluation of a specific control technology, a review of the technology in use, or that would be available at a specific mine.

Regional DPM Seminars. During September and October 2002, MSHA conducted regional DPM seminars at Ebensburg, PA, Knoxville, TN, Lexington, KY, Des Moines, IA, Kansas City, MO, Albuquerque, NM, Coeur d'Alene, ID, Green River, WY, and Elko, NV. These full-day seminars were offered free of charge in the major underground metal and nonmetal mining regions of the country to facilitate attendance by key mining industry personnel. The seminars covered the health effects of DPM exposure, the history and specific provisions of the regulation, DPM controls, DPM sampling, and the DPM Estimator, which is an interactive computer spreadsheet program used for analyzing a mine's DPM sources and controls.

NIOSH Diesel Emission Workshops. MSHA staff participated in two NIOSH Diesel Emissions and Control Technologies in Underground Metal and Nonmetal Mines in February and March 2003 in Cincinnati, OH and Salt Lake City, UT. These workshops provided technical presentations and a forum for discussing issues relating to control technologies for reducing miners' exposure to particulate matter and gaseous emissions from the exhaust of diesel-powered vehicles in underground mines, and to help mine managers, maintenance personnel, safety and health professionals, and ventilation engineers select and apply diesel particulate filters and other control technologies in their mines. Speakers represented MSHA, NIOSH, and several mining companies, and ample time was provided for questions and in-depth technical discussion of issues raised by attendees.

NSSGA DPM Sampling Workshop: As part of the Kentucky Stone Association Seminar, MSHA staff conducted a diesel particulate sampling workshop in Louisville, Kentucky from December 11 through 13, 2002. The three day seminar was hosted by the National Stone Sand and Gravel Association. On the first day of the seminar, diesel particulate sampling procedures were reviewed. The participants were trained in pump calibration, sample train assembly and note taking. On the second, participants traveled to the Rogers Group Jefferson County Mine and conducted full shift sampling on underground workers. MSHA technical support staff took ventilation measurements and collected area samples to assess mine DPM emissions. On the final day of the seminar, engine emission and ventilation measurements were reviewed with the participants. Additionally, the MSHA DPM outreach material was reviewed and discussed. Approximately 10 industry participants attended the seminar.

Nevada Mining Association Safety Committee. MSHA staff attended a meeting of the Nevada Mining Association Safety Committee in Elko, NV in April 2003 to discuss DPM control technologies. Discussion topics included bio-diesel fuel blends, various fuel additives and fuel pre-treatment devices, to mine ventilation, environmental cabs, clean engines, and diesel particulate filter systems. The mining companies' experiences with and perspectives on these technologies were discussed, along with MSHA's experiences, observations made at various mines, and results of laboratory and field testing.

MSHA South Central Joint Mine Safety and Health Conference. A DPM workshop was presented at this conference in April 2003 in New Orleans, LA. This workshop included a detailed history and explanation of the provisions of the MNM DPM regulation, and a technical presentation on feasible DPM engineering controls.

2003 Joint National Meeting of the Joseph A. Holmes Safety Association, National Association of State Mine Inspection and Training Agencies, Mine Safety Institute of America, and Western TRAM (Training Resources Applied to Mining). A DPM workshop was presented at this joint conference in June 2003 in Reno, NV. This workshop included a detailed history and explanation of the provisions of the MNM DPM regulation, and a technical presentation on DPM sampling, analytical tools for identifying and evaluating DPM sources in mines, and feasible DPM engineering controls.

Web site postings. MSHA created a single source page for DPM final rules for Metal/Nonmetal Mines on its Web site, *www.msha.gov*. Links were established to obtain information on specific topics, including:

—DRAFT Metal and Nonmetal Health Inspection Procedures Handbook, Chapter T—Diesel Particulate Matter Sampling

—DRAFT Diesel Particulate Matter Sampling Field Notes

—Metal and Nonmetal Diesel Particulate Matter (DPM) Standard Error Factor for TC Analysis Written Compliance Strategy

—Metal and Nonmetal Diesel Particulate Matter (DPM) Standard Draft Compliance Guide

—Other Resources

—NIOSH Listserve

—Diesel Emissions and Control Technologies in Underground Metal and Nonmetal Mines

—Metal and Nonmetal Diesel Particulate Filter Selection Guide

—Baseline DPM Sample Results

—PowerPoint Presentations

—From Compliance Assistance Workshops on Diesel Rule

—Summary of Requirements Mine Safety and Health Administration's (MSHA's) Standard on Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners that are in effect as of July 20, 2002.

—SKC Diesel Particulate Matter Cassette with Precision-jeweled Impactor

—Diesel Particulate Matter (DPM) Control Technologies with Percent Removal Efficiency

—Diesel Particulate Matter (DPM) Control Technologies

—Table I: Non-Catalyzed Particulate Filters, Base Metal Particulate Filters, and Paper Filters

—Table II: Catalyzed (Platinum Based) Diesel Particulate Filters

—Work Place Emissions Control Estimator

—Advanced Notice of Proposed Rule Making (ANPRM)

—Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners (ANPRM)—09/25/2002

—Final Rules

—Part II—30 CFR Part 57—Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners—01/19/2001

—Part II—30 CFR Part 57—Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners—Delay of Effective Dates—05/21/2001

—Part II—30 CFR Part 57—Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners—Final Rule and Proposed Rule—07/05/2001

—Part II—30 CFR Part 57—Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners; Final Rule—02/27/2002

—Part II—30 CFR Part 57—Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners; Final Rule—07/18/2002

—Regulatory Economic Analysis

—Final Regulatory Economic Analysis And Regulatory Flexibility Analysis for Final Rule on 30 CFR Parts 57 Final Standards and Regulations—Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

—News Releases

—MSHA Rules Will Control Miners' Exposure to Diesel Particulate—01/18/2001

—Program Information Bulletins

—PIB01–10 Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners—08/28/2001

—PIB02–04 Potential Health Hazard Caused by Platinum-Based Catalyzed Diesel Particulate Matter Exhaust Filters—05/31/2002—

—PIB02–08 Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners-Summary of Settlement Agreement—08/12/2002

In addition to the Web site postings specifically intended for the metal and nonmetal mining industry, MSHA has created a Diesel Single Source Page for the coal industry. A list of approved engines is accessible from the coal page. Many of the other topics found on that page may also be of interest to the metal and nonmetal mining industry, particularly for those operations at gassy metal/nonmetal mines where permissible equipment is required.

Publications: As part of the settlement agreement, MSHA agreed to issue citations for violations of the interim concentration limit only after MSHA and NIOSH are satisfied with the performance characteristics of the SKC sampler. During the 31-Mine study, MSHA observed that the deposit area of the SKC submicron impactor filter was not as consistent as those obtained for preliminary evaluation. This was attributed to inconsistent crimping of the aluminum foil cone on the filter capsule.

NIOSH, in collaboration with MSHA and SKC undertook a project to redesign the filter capsule and improve the consistency of the deposit area. This was accomplished by replacing the cone with a 32-mm inside diameter ring and replacing the 37-mm filter with a 38-mm filter. These modifications provided a

consistent 8.04 square centimeter deposit and eliminated leakage around the filter. The results of this project were prepared into a scientific publication ''Sampling Results of the Improved SKC Diesel Particulate Matter Cassette'' by James D. Noll, Robert J. Timko, Linda McWilliams, Peter Hall, and Robert A. Haney. This paper is being peer reviewed for publication in a scientific journal. The following abstract was prepared for the study results:

Diesel particulate matter (DPM) cassettes, manufactured by SKC, Inc., Eighty Four, PA, are designed to collect airborne particulates being emitted by diesel powered machinery. These devices, primarily used in underground metal/non-metal mines, enable officials to determine miner exposure to DPM. The SKC DPM cassette is a size selective sampler that was designed by researchers with the U.S. Bureau of Mines, now a part of the National Institute for Occupational Safety and Health (NIOSH), and SKC engineers to collect DPM. This cassette is preferred to a conventional respirable dust sampler because, if DPM is sampled in the presence of carbonaceous ore dust, the ore dust and DPM will collect on the quartz filter, causing the carbon attributed to DPM to be artificially high. In this study, NIOSH researchers investigated the ability of the SKC DPM cassette to collect DPM while preventing mineral dust from collecting on the filter. This cassette discriminated dusts and efficiently collected DPM in both laboratory and field evaluations. In the presence of carbon-based mineral dust having an average concentration of 8 mg/m^3, no mineral dust was found on SKC DPM cassette filters. NIOSH researchers did discover that DPM deposits on filters that were manufactured prior to August 2002 were non-uniform and inconsistent across the filter surfaces. DPM deposit cross-sectional areas varied from 6 to 9 cm^2. To correct this problem, SKC modified the cassette. The resulting cassette produced areas of DPM deposit between 8.11 and 8.21 cm^2, a difference of less than 2%.

Specific control technology studies. Following the settlement agreement, MSHA was invited by various mining companies to evaluate the effectiveness of several different control technologies for diesel particulate matter. These control technologies included ceramic filters, bio-diesel fuel and a fuel oxygenator. Company participation was essential to the success of each study. Ceramic filters were evaluated in two mines, one where MSHA was the only investigator and one where NIOSH was the primary investigator. In the MSHA study, DPM on a production unit was evaluated with and without ceramic filters installed on the loader and trucks. In the NIOSH study a variety of ceramic filters were tested in an isolated zone.

Bio-diesel fuel was evaluated in two mines. In one mine, a 20 and 50 percent recycled bio-diesel fuel and a 50 percent new bio-diesel were evaluated. In the second mine, a 35 percent recycled bio-diesel fuel and a 35 percent new bio-diesel fuel were evaluated.

The fuel oxygenator system was evaluated in one mine. The mine exhaust was sampled with and without the units installed. For the tests with the oxygenator units, the oxygenator units were installed on all production equipment.

Following is a summary of the five individual mine technology evaluation studies:

Kennecott Greens Creek Mining Company: The Mine Safety and Health Administration and Kennecott Greens Creek Mining Company participated in a collaborative study to verify the efficiency of catalyzed ceramic diesel particulate filters for reducing diesel emissions. The goal of the study was the identification of site-specific, practical mine-worthy filter technology.

This series of tests was designed to determine the reduction in emissions and personal exposure that can be achieved when ceramic filters are installed on a loader and associated haulage trucks operating in a production stope. Relative engine gaseous and diesel particulate matter emissions were also determined for the equipment under specific load condition.

The tests were conducted over a two-week period. Three shifts were sampled with ceramic after-filters installed; and three shifts were sampled without the after-filters installed. Personal samples were collected to assess worker exposures. Area samples were collected to assess engine emissions. Both gaseous and diesel particulate measurements were taken.

Sampling results indicate significant reductions in both personal exposures and engine emissions. These results also indicated that factors such as diesel particulate contamination of intake air, stope ventilation parameters, and isolated atmospheres in vehicle cabs as well as the ceramic diesel particulate filters may have a significant impact on personal exposures. The following findings and conclusions were obtained from the study:

1. The results of the raw exhaust gas measurements conducted during the study indicated that the engines were operating properly.

2. The ceramic filters installed on the machines used in this study did not adversely affect the machine operation. Even with some apparent visual cracking from the rotation of the filter media, the ceramic filters removed more than 90% of the DPM. The filters passively regenerated during machine operation.

3. The Bosch smoke test provides an indication of filter deterioration; however, the colorization method does not quantify the results.

4. Personal DPM exposures were reduced by 60 to 68 percent when after-filters were used.

5. CO levels decreased by up to one-half when the catalyzed filters were being used. There appeared to be an increase in NO_2 when catalyzed filters are being used; however, it was unclear whether this increase was due to data variability, changes in ventilation rate, or the use of the catalyzed filters.

6. The use of cabs reduced DPM concentrations by 75 percent when after-filters were used and by 80 percent when after-filters were not in use.

7. Ventilation airflow was provided to the stopes through fans with rigid and bag tubing. Airflow was the same or greater than the Particulate Index, but typically lower than the gaseous ventilation rate.

8. The use of ceramic after-filters reduced average engine DPM emissions by 96 percent.

9. The reduction in personal exposure was not attributed solely to after-filter performance because other factors such as ventilation, upwind equipment use, and cabs also influence personal exposure.

Carmeuse North America, Inc., Maysville Mine: MSHA entered into a collaborative effort with NIOSH, Industry, and the Kentucky Department of Energy to test DPM emissions and exposures when using various blends of bio-diesel fuels in an underground stone mine. As part of its compliance assistance program, MSHA provides support to mining operations to evaluate diesel particulate control technologies. The study was initiated by the industry partner, with MSHA and NIOSH providing support for study design, data collection, and sample and data analysis. Project funding was provided by Carmeuse and Kentucky Department of Energy, through the Kentucky Clean Fuels Coalition.

The initial study was conducted in two phases, a 20% bio-diesel and a 50% bio-diesel blend of recycled vegetable oil, each mixed with 100% low sulfur No. 2 standard diesel fuel. Baseline conditions were established using low sulfur No. 2 standard diesel fuel. In a third phase of the study, a 50% blend of new soy bio-diesel fuel was tested.

Area samples were collected at shafts to assess equipment emissions. Personal samples were collected to assess worker exposure. These samples were analyzed by NIOSH using the NIOSH 5040

method to determine total carbon and elemental carbon concentrations. Results indicate that significant reductions in emissions and worker exposure were obtained for all bio-diesel mixtures. These reductions were in terms of both elemental and total carbon. Preliminary results for the 20% and 50% recycled vegetable oil indicated 30 and 50 percent reductions in DPM emissions and exposures, respectively. Preliminary results for the tests on the 50% blend of new soy bio-diesel fuel, showed about a 30 percent reduction in DPM emissions and exposures.

Carmeuse North America, Inc., Black River Mine: Following the success of the bio-diesel tests at Maysville Mine, Carmeuse requested assistance in continuing the bio-diesel optimization testing at their Black River Mine. In this test two bio-diesel blends along with a baseline test were made. For each test personal exposures and the mine exhaust were tested for two shifts. The two bio-diesel blends included a 35% recycled vegetable oil and a 35% blend of new soy oil. Preliminary results for both the 35% recycled vegetable oil and the 35% blend of new soy bio-diesel fuel showed about a 30 percent reduction in DPM emissions and exposures.

Rogers Group, Jefferson County Mine: MSHA personnel were invited by the Company to evaluate a fuel oxygenation system. The oxygenator is installed in the fuel line of the diesel equipment. The company was installing the units to increase fuel economy and was interested in determining their effect on DPM. MSHA conducted baseline sampling prior to the installation of the units. Personal samples were collected on production workers and area samples were collected in the mine exhaust airflow. The units were installed on loaders and trucks. The sampling was repeated after the units had accumulated 100 hours of operation. Preliminary results indicated that the use of the fuel oxygenator had no measurable effect on either DPM exposure or emissions.

Review of the Technology in Use Assistance

Martin Marietta Aggregates, North Indianapolis Mine: MSHA personnel provided DPM compliance assistance at this mine during a full-day visit in March 2003. The mine's DPM sampling history was reviewed, along with current operating and equipment maintenance practices, mine ventilation, diesel equipment inventory, and steps taken to date and future plans to reduce DPM exposures. Currently, mechanical ventilation is used at the mine and an upgrade to the ventilation system was in progress. The full range of DPM engineering controls was discussed, an exhaust temperature measurement and data logging system was demonstrated, and easy-to-use computer software for using such data to select appropriate DPM filter systems was presented. A simple approach for measuring the effectiveness of cab air filtering and pressurization systems was demonstrated, MSHA's computer spreadsheet software for evaluating the individual and combined effect of DPM emission sources and controls was presented, the highest DPM-emitting equipment was identified (so that future equipment-specific DPM control efforts could be appropriately focused), and the likely effect of various ventilation system upgrades was discussed.

Martin Marietta Aggregates, Parkville Mine: MSHA personnel provided DPM compliance assistance at this mine during a full-day visit in April 2003. The mine's DPM sampling history was reviewed, along with current operating and equipment maintenance practices, mine ventilation, diesel equipment inventory, and steps taken to date and future plans to reduce DPM exposures. Mechanical ventilation is currently used at the mine and an upgrade to the ventilation system was in progress. The full range of DPM engineering controls was discussed, an exhaust temperature measurement and data logging system was demonstrated, and easy-to-use computer software for using such data to select appropriate DPM filter systems was presented. A simple approach for measuring the effectiveness of cab air filtering and pressurization systems was demonstrated, computer spreadsheet software for evaluating the individual and combined effect of DPM emission sources and controls was presented, the highest DPM-emitting equipment were identified (so that future equipment-specific DPM control efforts could be appropriately focused), and the likely effect of various ventilation system upgrades was discussed.

Martin Marietta Aggregates, Kaskaskia Mine: MSHA personnel provided DPM compliance assistance at this mine during a full-day visit in May 2003. The mine's DPM sampling history was reviewed, along with current operating and equipment maintenance practices, mine ventilation, diesel equipment inventory, and steps taken to date and future plans to reduce DPM exposures. Currently, natural ventilation is used at the mine. The full range of DPM engineering controls was discussed, an exhaust temperature measurement and data logging system was demonstrated, and easy-to-use computer software for using such data to select appropriate DPM filter systems was presented. A simple approach for measuring the effectiveness of cab air filtering and pressurization systems was demonstrated, computer spreadsheet software for evaluating the individual and combined effect of DPM emission sources and controls was presented, the highest DPM-emitting equipment were identified (so that future equipment-specific DPM control efforts could be appropriately focused), and the likely effect of various ventilation system upgrades was discussed.

Martin Marietta Aggregates, Manheim Mine: MSHA personnel provided DPM compliance assistance at this mine during a full-day visit in May 2003. The mine's DPM sampling history was reviewed, along with current operating and equipment maintenance practices, mine ventilation, diesel equipment inventory, and steps taken to date and future plans to reduce DPM exposures. Currently, natural ventilation is used at the mine. The full range of DPM engineering controls was discussed, an exhaust temperature measurement and data logging system was demonstrated, and easy-to-use computer software for using such data to select appropriate DPM filter systems was presented. A simple approach for measuring the effectiveness of cab air filtering and pressurization systems was demonstrated, computer spreadsheet software for evaluating the individual and combined effect of DPM emission sources and controls was presented, the highest DPM-emitting equipment were identified (so that future equipment-specific DPM control efforts could be appropriately focused), and the likely effect of various ventilation system upgrades was discussed.

Rogers Group, Oldham County Mine: MSHA personnel provided DPM compliance assistance at this mine during a full-day visit in November 2002. Extensive DPM sampling was conducted at this mine. Both personal exposure samples and area samples were collected. None of the personal samples exceeded 160 $\mu g/m^3$. Current operating and equipment maintenance practices were reviewed, along with mine ventilation, diesel equipment inventory, and steps taken to date and future plans to reduce DPM exposures. Mechanical ventilation was provided for the mine. The full range of DPM engineering controls was discussed. DPM samples were collected inside and outside equipment cabs. Results from this survey indicate the environmental cabs provided significant reduction in

the DPM exposure of the equipment operators.

Rogers Group, Jefferson County Mine: MSHA personnel provided DPM compliance assistance at this mine during a full-day visit in December 2002. Both personal exposure samples and area samples were collected. The highest personal sample, collected on the loader, was 468 μg/m^3. The loader was operated with the window open. Current operating and equipment maintenance practices were reviewed, along with mine ventilation, diesel equipment inventory, and steps taken to date and future plans to reduce DPM exposures. Mechanical ventilation was provided for the mine. The full range of DPM engineering controls was discussed. The Estimator, MSHA's computer spreadsheet software for evaluating the individual and combined effect of DPM emission sources and controls, was presented, the highest DPM-emitting equipment were identified so that future equipment-specific DPM control efforts could be appropriately focused. Finally, the likely effect of various ventilation system upgrades was discussed.

Nalley and Gibson, Georgetown Mine: MSHA personnel provided DPM compliance assistance at this mine during a full-day visit in May 2003. The mine's DPM sampling history was reviewed, along with current operating and equipment maintenance practices, mine ventilation, diesel equipment inventory, and steps taken to date and future plans to reduce DPM exposures. DPM samples were collected to assess improvements since the baseline sampling. Currently, mechanical ventilation provides airflow to the mine. The full range of DPM engineering controls was discussed, an exhaust temperature measurement and data logging system was demonstrated. An easy-to-use computer software for using such data to select appropriate DPM filter systems was presented. A simple approach for measuring the effectiveness of cab air filtering and pressurization systems was demonstrated. The Estimator, MSHA's computer spreadsheet software for evaluating the individual and combined effect of DPM emission sources and controls, was presented. The highest DPM-emitting equipment were identified so that future equipment-specific DPM control efforts could be appropriately focused, and the likely effect of various ventilation system upgrades was discussed.

Stone Creek Brick Company: MSHA personnel provided DPM compliance assistance at this mine during a full-day visit in May 2003. DPM samples were collected on underground workers. The mine's DPM sampling history was reviewed, along with current operating and equipment maintenance practices, mine ventilation, diesel equipment inventory, and steps taken to date and future plans to reduce DPM exposures. The mine uses mechanical ventilation to provide airflow to the mine. The full range of DPM engineering controls was discussed. None of the equipment were equipped with environmental cabs. The Estimator, MSHA's computer spreadsheet software for evaluating the individual and combined effect of DPM emission sources and controls, was presented. The highest DPM-emitting equipment were identified so that future equipment-specific DPM control efforts could be appropriately focused. Also, the likely effect of various ventilation system upgrades was discussed.

Wisconsin Industrial Sand Co., Maiden Rock Mine: MSHA personnel provided DPM compliance assistance at this mine during a full-day visit in May 2003. The mine's DPM sampling history was reviewed, along with current operating and equipment maintenance practices, mine ventilation, diesel equipment inventory, and steps taken to date and future plans to reduce DPM exposures. The full range of DPM engineering controls was discussed. The Estimator, MSHA's computer spreadsheet software for evaluating the individual and combined effect of DPM emission sources and controls, was presented. The highest DPM-emitting equipment were identified so that future equipment-specific DPM control efforts could be appropriately focused.

Gouverneur Talc Company, Inc., No. 4 Mine: MSHA personnel provided DPM compliance assistance at this mine during a full-day visit in May 2003. DPM samples were collected on underground workers. The mine's DPM sampling history was reviewed, along with current operating and equipment maintenance practices, mine ventilation, diesel equipment inventory, and steps taken to date and future plans to reduce DPM exposures. The full range of DPM engineering controls was discussed, an exhaust temperature measurement and data logging system was demonstrated, and easy-to-use computer software for using such data to select appropriate DPM filter systems was presented. A simple approach for measuring the effectiveness of cab air filtering and pressurization systems was demonstrated, a computer spreadsheet software for evaluating the individual and combined effect of DPM emission sources and controls was presented, the highest DPM-emitting equipment was identified (so that future equipment-specific DPM control efforts could be appropriately focused), and the likely effect of various ventilation system upgrades was discussed.

Laboratory Compliance Assistance conducted by MSHA: In addition to the compliance assistance field tests, MSHA's diesel testing laboratory has been working with manufacturers to evaluate various types of DPM control technologies. Certain of these technologies can be applied in either underground metal/nonmetal or coal mines.

Evaluating paper/synthetic media as exhaust filters: MSHA has been evaluating paper/synthetic media as exhaust filters. These filters have shown high DPM removal efficiencies in excess of 90% in the laboratory when tested on MSHA's test engine using the test specified in subpart E of 30 CFR part 7. The laboratory has tested approximately 20 different paper/synthetic media from 10 different filter manufacturers. Even though much of this work is directed to underground coal mine applications for use on permissible equipment, this technology is available for use on permissible equipment that is used in underground gassy metal/nonmetal mines. In addition, some underground coal mine operators have considered adding exhaust heat exchanger systems to nonpermissible equipment in order to use the paper/synthetic filters in place of ceramic filters (a heat exchanger is needed to reduce the exhaust gas temperature to below 302 °F for these types of filters). This could also be an option for metal/nonmetal equipment that would need DPM filter technology, particularly in operations in gassy mines where permissible equipment is required.

Evaluating Ceramic Filter Systems: MSHA has worked with six different ceramic filter system manufacturers to evaluate the effects of their catalytic washcoats on NO_2 production. As discussed elsewhere in this preamble, catalytic washcoats on the ceramic filters may cause increases in NO_2 levels. MSHA used its test engine and followed the test procedures in subpart E of 30 CFR part 7. MSHA has posted on its Web site on the Diesel Single Source Page a list of ceramic filters that have significantly increased NO_2 levels. MSHA has also listed the ceramic filters that are not known to have increased NO_2 levels. MSHA also checked the DPM removal efficiencies for these filters during the laboratory tests and the efficiency results have agreed with the efficiencies posted on the Diesel Single Source Page of 85% for cordierite and 87% for silicon carbide. MSHA also worked with NIOSH during these tests

to collect DPM samples for EC analysis using the NIOSH 5040 method. The laboratory results showed that the filters removed EC with efficiencies up to 99%.

Evaluation of Fuel Oxygenator System: MSHA recently completed laboratory tests on a Rentar in-line fuel catalyst. The Rentar unit was installed on a Caterpillar 3306ATAAC which was coupled to a generator. An electrical load bank was used to load the engine under various operating conditions. The engine was baselined for gaseous and DPM emissions without the Rentar; then, the Rentar was installed and operated for 100 hours of break-in. The gaseous and DPM emission measurements were repeated after the 100 hour break-in. The preliminary laboratory results showed some measurable reductions in whole DPM. Samples were also collected for EC analysis using the NIOSH 5040 method. Those results are currently being evaluated by NIOSH.

Evaluation of a Magnet System: MSHA is preparing to perform laboratory tests for Ecomax, a manufacturer of a magnet system installed on the fuel line, oil filter, air intake and radiator. A preliminary MSHA field test of this product was done at a surface aggregate operation. The magnetic device demonstrated a 30% reduction in CO levels. Subsequent laboratory testing will include DPM measurements.

Additional Testing: MSHA is also planning a lab test on a manufacturer's fluidized bed, several types of fuel additives, and a fuel preparative. The test plans and the required test hardware are currently being discussed with the respective manufactures of these products.

VI. Exposure Assessment and Literature Update

A. Introduction

Section VI.B summarizes new exposure data that have become available since publication, on January 19, 2001, of the existing rule limiting DPM levels in underground metal and nonmetal mines. Next, in Section VI.C, we survey the most recent scientific literature (April 2000–March 2003) pertaining to adverse health effects of DPM and fine particulates in general.

B. DPM Exposures in Underground Metal and Nonmetal Mines

In the existing risk assessment (66 FR 5752) we evaluated exposures based on 355 samples collected at 27 underground U.S. M/NM mines prior to the rule's promulgation. Mean DPM concentrations found in the production areas and haulageways at those mines ranged from about 285 μg/m³ to about 2000 μg/m³, with some individual measurements exceeding 3500 μg/m³. The overall mean DPM concentration was 808 μg/m³. All of the samples considered in the existing risk assessment were collected prior to 1999, and some were collected as long ago as 1989.

Two new bodies of DPM exposure data, collected subsequent to promulgation of the 2001 rule, have now been compiled for underground M/NM mines: (1) Data collected in 2001 from 31 mines for purposes of the 31-Mine Study (Ref. 31-Mine Study) and (2) data collected between 10/30/2002 and 3/26/2003 from 171 mines to establish a baseline for future samples (Ref. Baseline Samples, 2003). Both of these datasets have been placed into the public record, and they are summarized in the next two subsections below. Following these summaries, we discuss the relationship between EC and TC, including the ratio of EC to TC (EC:TC). This discussion will be based entirely on samples taken for the 31-Mine Study, since those samples were controlled for potential TC interferences from tobacco smoking and oil mist, whereas the baseline samples were not.

1. Data from Joint Study

As described in greater detail in MSHA's final report on the 31-Mine Study, MSHA collected 464 DPM samples in 2001 at 31 underground M/NM mines. Of these 464 samples, 106 were voided, most of them due to potential interferences resulting in invalid TC content used to evaluate DPM exposures. Table VI–1 shows how the remaining 358 valid DPM samples were distributed across four broad mine categories. All samples at one of the metal mines were voided, leaving 30 mines with valid samples indicating DPM concentrations.

TABLE VI–1.—NUMBER OF DPM SAMPLES, BY MINE CATEGORY

	Number of mines with valid samples	Number of valid samples	Average Number of valid samples per mine
Metal	11	116	10.5
Stone	9	105	11.7
Trona	3	54	18.0
Other	7	83	11.9
Total	30	358	12.5

Table VI–2 summarizes the valid DPM concentrations observed in each mine category, assuming that submicrometer TC, as measured by the SKC sampler, comprises 80 percent of all DPM. The mean concentration across all 358 valid samples was 432 μg/m³ (Std. error = 21.0 μg/m³). The mean concentration was greatest at metal mines, followed by stone and ''other N/M.'' At the three trona mines sampled, both the mean and median DPM concentration were substantially lower than what was observed for the other categories. This was due to the increased ventilation used at these mines to control methane emissions.

TABLE VI–2.—DPM CONCENTRATIONS (μG/M³), BY MINE CATEGORY. DPM IS ESTIMATED BY TC/0.8

	Metal	Stone	Trona	Other N/M
Number of samples	116	105	54	83
Minimum	46.	16.	20.	27.
Maximum	2581.	1845.	331.	1210.
Median	491.	331.	82.	341.

TABLE VI–2.—DPM CONCENTRATIONS (μG/M³), BY MINE CATEGORY. DPM IS ESTIMATED BY TC/0.8—Continued

	Metal	Stone	Trona	Other N/M
Mean	610.	465.	94.	359.
Std. Error	44.7	36.0	9.4	26.6
95% UCL	699.	537.	113.	412.
95% LCL	522.0	394.	75.	306.

After adjusting for differences in sample types and in occupations sampled, DPM concentrations at the non-trona mines were estimated to be about four to five times the concentrations found at the trona mines. Although there were significant differences between individual mines, the adjusted differences between the general categories of metal, stone, and other N/M mines were not statistically significant.[1] For the 304 valid samples taken at mines other than trona, the mean DPM concentration was 492 μg/m³ (Std. error = 23.0).

Again assuming that submicrometer TC as measured by the SKC sampler comprises 80 percent of DPM, the mean DPM concentration observed was 1019 μg/m³ at the single mine exhibiting greatest DPM levels. Four of the nine valid samples at this mine exceeded 1487 μg/m³. In contrast, DPM concentrations never exceeded 500 μg/m³ at 8 of the 30 mines with valid samples (2 of the 11 metal mines, 1 of the 3 stone, all 3 trona, and 2 of the 7 other N/M). (Note that 500 μg/m³ is the whole particulate equivalent of the 400 μg/m³ interim standard.) Some individual measurements exceeded 200DPM μg/m³ at all but one of the mines sampled.

2. Baseline Data

An analysis of MSHA's baseline sampling appears in Section V, Compliance Assistance, and is used as the basis for this dicussion.

Table VI–1 summarizes, by general commodity, the EC levels measured during this sampling. The overall mean eight-hour full shift equivalent EC concentration of samples in this study was 170 μg/m³, and the overall median was 117 μg/m³. Table VI–2 provides a similar summary for estimated DPM levels, using TC/0.8 and TC ≈ 1.3 × EC.[2] Under these assumptions, the estimated mean DPM level was 277 μg/m³, and the median was 191 μg/m³. Since the baseline data and the 31-Mine study both showed significantly lower levels at trona mines than at other underground M/NM mines, Tables VI–7 and VI–8 present overall results both including and excluding the three underground trona mines sampled.

TABLE VI–1.—BASELINE EC CONCENTRATIONS

	8-hour full shift equivalent EC concentration—(μg/m³)					
	Metal	Stone	Other N/M	Trona	Total	Total excluding Trona
Number of samples	189	519	151	15	874	859
Maximum	1549	1340	634	149	1549	1549
Median	184	104	99	70	117	120
Mean	227	164	130	69	170	172
Std. Error	14.6	7.5	8.5	10.3	5.8	5.9
95% UCL	256	179	147	92	182	184
95% LCL	198	150	115	47	159	161

TABLE VI–2.—BASELINE DPM CONCENTRATIONS

	Estimated 8-hour full shift equivalent DPM concentration—(μg/m³)					
	Metal	Stone	Other N/M	Trona	Total	Total excluding Trona
Number of samples	189	519	151	15	874	859
Maximum	2518.	2178.	1030.	242.	2518.	2518.
Median	299.	170.	162.	113.	191.	195.
Mean	369.	267.	212.	113.	277.	280.
Std. Error	23.8	12.2	13.8	16.7	9.4	9.5
95% UCL	416.	291.	239.	149.	295.	299.
95% LCL	323.	243.	185.	77.	259.	261.

Baseline EC sample results varied widely between mines within commodities and also within most mines. Table VI–3 summarizes baseline EC results for the 19 occupations found to have at least one sample where the

[1] These conclusions derive from an analysis of variance, based on TC measurements, as described in the report of the 31–Mine Study. They depend on an assumption that the ratio of DPM to TC is uncorrelated with mine category, sample type (*i.e.*, personal or area), and occupation.

[2] The relationship DPM ≈ TC/0.8 is the same as that assumed in the existing risk assessment. The relationship TC ≈ 1.3 × EC was formulated under the settlement agreement, based on TC:EC ratios observed in the joint 31–Mine Study, as described in the next subsection of this exposure assessment.

EC level exceeded the proposed 308 μg/m³ 8-hour full shift equivalent interim EC limit. As indicated by the table, EC levels varied widely within each occupation.

TABLE VI–3.—BASELINE EC CONCENTRATIONS FOR OCCUPATIONS WITH AT LEAST ONE VALUE EXCEEDING PROPOSED INTERIM EC LIMIT

Occupation	8-hour full shift equivalent EC concentration (μg/m³)			
	Number of valid samples	Minimum	Median	Maximum
Scaling (hand)	17	14	128	1,549
Front-end Loader	155	0	104	1,340
Miscoded	3	395	450	1,123
Drill Operator	93	2	122	880
Truck Driver	183	0	118	826
Blaster, Power Gang	100	5	165	738
Miner, Drift	13	12	134	712
Mucking Machine	18	12	213	671
Supervisor	10	1	67	658
Roof Bolter	22	48	167	638
Complete Loader	17	32	145	634
Scaling (mechanical)	63	0	101	577
Utility Man	18	22	71	491
Miner, Stope	11	127	254	479
Belt Crew	8	20	173	386
Cleanup Man	2	51	217	384
Engineer	1	337	337	337
Crusher operator	14	1	36	328
Shuttle car operator	3	14	73	323

Figure VI–1 depicts, by mine category, the percentage of baseline samples that exceed the proposed interim limit of 308 μg/m³. Underground metal mines exhibited the highest proportion of samples exceeding this limit, followed by stone and then other nonmetal mines. All 15 samples collected in the three trona mines met the proposed limit. Across all commodities, 15.7 percent of the 874 valid baseline samples exceeded the interim EC limit.

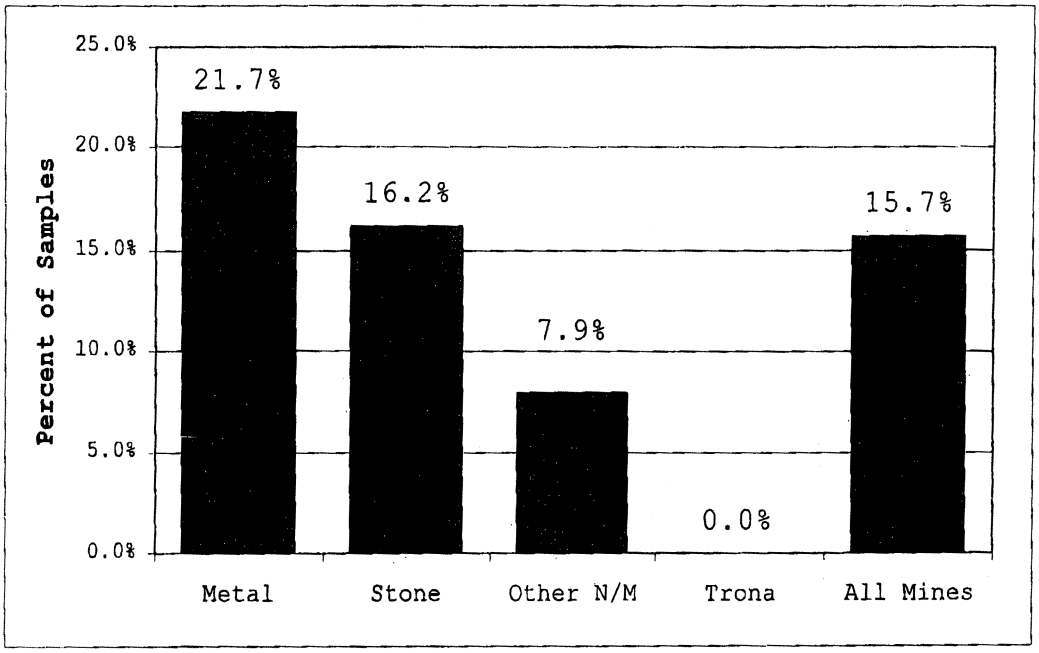

Figure VI-1 Distribution of samples exceeding proposed interim EC limit.

Figure VI–2 shows how samples exceeding the proposed interim EC limit were distributed over individual mines. One to five baseline samples were taken at each mine. In 120 of the 171 mines sampled (70 percent), none of the

baseline EC measurements exceeded 308 μg/m³. The remaining 51 mines (30 percent) had at least one sample for which EC exceeded 308 μg/m³. All samples taken at 14 of the mines exceeded the proposed interim limit.

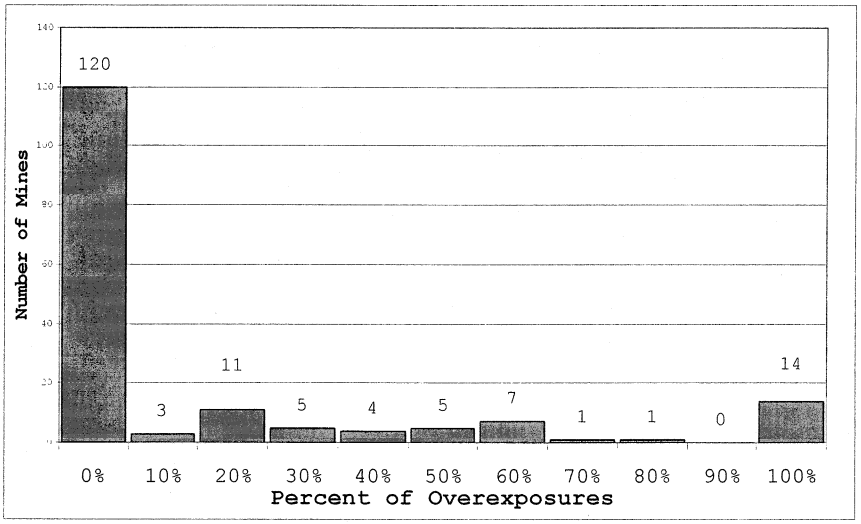

Figure VI-2. Distribution of samples exceeding proposed interim EC limit.

3. Relationship Between Elemental and Total Carbon

Unlike the 31-Mine Study, no special precautions were taken during MSHA's baseline sampling to avoid tobacco smoke or other substances that could potentially interfere with using TC (*i.e.*, EC + OC) as a surrogate measure of DPM. Therefore, the baseline data should not be used to evaluate the OC content of DPM or the ratio of EC to TC within DPM. In the 31-Mine Study, great care was taken to void all samples that may have been exposed to tobacco smoke or other extraneous sources of organic carbon. Accordingly, the analysis of the EC:TC ratio we present here relies entirely on data from the 31-Mine Study. It is important to note that most of the samples in this study were taken in the absence of exhaust filters to control DPM emissions. Since exhaust filters may have different effects on EC and OC emissions, the results described here apply only to mine areas where exhaust filters are not employed.

Figure VI–3 plots the EC:TC ratios observed in the 31-Mine Study against the corresponding TC concentrations. The various symbols shown in the plot identify samples taken at the same mine. The EC:TC ratio ranged from 23 percent to 100 percent, with a mean of 75.7 percent and a median of 78.2 percent. Note that the reciprocal of 0.78, which is 1.3, equals the median of the TC:EC ratio observed in these samples.[3] The 1.3 TC:EC ratio was the value accepted, under terms of the settlement agreement, for the purpose of temporarily converting EC measurements to TC measurements.

[3] The median of reciprocal values is always equal to the reciprocal of the median. This relationship does not hold for the mean.

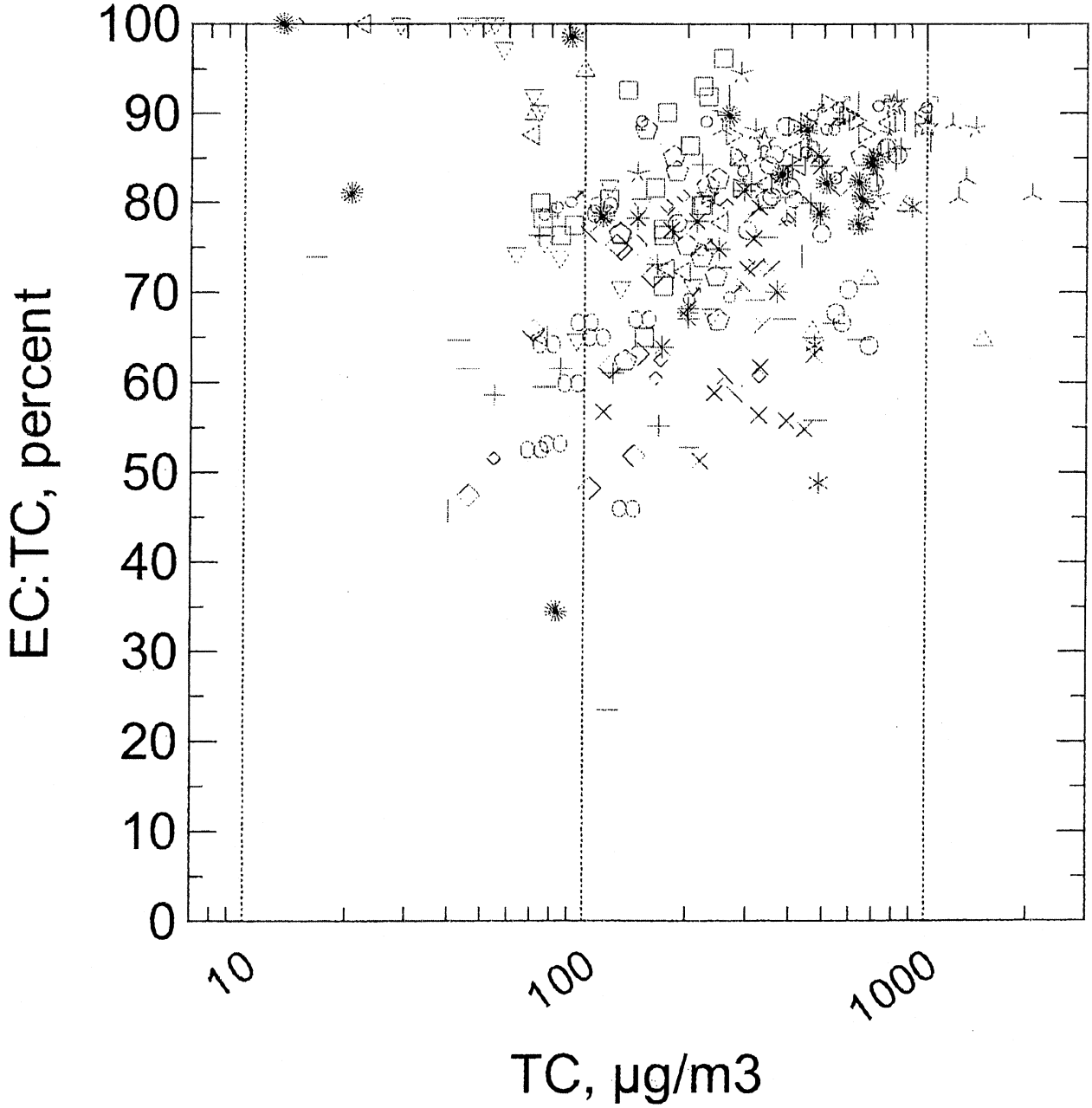

Figure VI-3. EC:TC ratios found in 358 valid samples from 31-Mine Study. Symbols identify samples from same mine.

The existing rule defines an interim TC limit of 400 µg/m³. Under the current proposal, this interim limit would be replaced with an interim EC limit of 308 µg/m³. Table VI–4 indicates the impact of this proposed change, based on the EC and TC data obtained from the 31-Mine Study. Both the 400 µg/m³ TC limit and the 308 µg/m³ EC limit were exceeded by about 31 to 32 percent of the samples. The difference (one sample out of 358) is not statistically significant in the aggregate. Seven samples, however, exceeded the TC limit but not the EC limit, and six samples exceeded the EC limit but not the TC limit.

TABLE VI–4.—COMPLIANCE WITH 400 μG/M³ TC LIMIT AND/OR PROPOSED 308 μG/M³ EC LIMIT.

[Numbers in parentheses are percentages.]

EC > 308 μg/m³	TC > 400 μg/m³		Total
	No	Yes	
no	239 (66.8)	7 (2.0)	246 (68.7)
yes	6 (1.7)	106 (29.6)	112 (31.3)
Total	245 (68.4)	113 (31.6)	358 (100.0)

C. Health Effects Literature Update

We have identified additional scientific literature pertaining to health effects of fine particulates in general and DPM in particular published subsequent to the January 19, 2001 final rule.

TABLE VI–5 STUDIES OF HUMAN RESPIRATORY AND IMMUNOLOGICAL EFFECTS, 2000–2002

Authors, year	Description	Key results
Frew *et al.*, 2001	25 healthy subjects and 15 subjects with mild asthma were exposed to diesel exhaust (108 μg/m³) or filtered air for 2 hr, with intermittent exercise. Lung function was assessed using a computerized whole body plethysmograph. Airway responses were sampled by bronchial wash (BW), bronchoalveolar lavage (BAL), and mucosal biopsies 6 hr. after ceasing exposures.	Both the asthmatic and healthy subjects developed increased airway resistance after exposure to diesel emissions, but airway inflammatory responses were different for the 2 groups. The healthy subjects showed statistically significant BW neutrophilia and BAL lymphocytosis 6 hr after exposure. The neutrophilic response of the healthy subjects was less intense than that seen in a previous study using a DPM concentration of 300 μg/m³.
Fusco *et al.*, 2001	Analysis of daily hospital admissions for acute respiratory infections, COPD, asthma, and total respiratory conditions in Rome, Italy.	Respiratory admissions among adults were significantly correlated with CO and NO_2 levels, but not with suspended particles. The authors noted that since CO and NO_2 are good indicators of combustion products in vehicular exhaust, the detected effects may be due to unmeasured fine and ultrafine particles.
Holgate *et al.,* 2002	25 healthy and 15 asthmatic subjects were exposed for 2 hours to 100 μg/m³ of DPM and to filtered air on separate days. Another 30 healthy subjects were exposed for 2 hours to DPM concentrations ranging from 25 to 311 μg/m³ and compared to 12 different healthy subjects exposed to filtered air. Exposure effects were assessed using lung function tests and biochemical tests of bronchial tissue samples.	Healthy and asthmatic subjects exhibited evidence of bronchioconstriction immediately after exposure. Biochemical tests of inflammation yielded mixed results but showed small inflammatory changes in healthy subjects after DPM inhalation.
Oliver *et al.*, 2001	Pulmonary function tests and questionnaire data were obtained for 359 ''heavy and highway'' (HH) construction workers. Intensity of DPM exposure was estimated according to job classification. Duration of exposure was estimated based on length of union membership.	After adjusting for smoking and some other potential confounders, HH workers showed elevated risk of asthma. One subgroup (tunnel workers) also showed elevated risk of both undiagnosed asthma and chronic bronchitis, compared to other HH workers. Respiratory symptoms appeared to decline with exposure duration as measured by length of union membership. The authors interpreted this as suggesting that HH workers tend to leave their trade when they experience adverse respiratory symptoms.
Salvi *et al.*, 2000	15 healthy nonsmoking volunteers were exposed to 300 μg/m³ DPM and clean air for one hour at least three weeks apart. Biochemical analyses were performed on bronchial tissue and bronchial wash cells obtained six hours after each exposure.	Diesel exhaust exposure enhanced gene transcription of IL–8 in the bronchial tissue and airway cells and increased IL–8 and GRO–α protein expression in the bronchial epithelium. This was accompanied by a trend toward increased IL–5 mRNA gene transcripts in the bronchial tissue. Study showed effects on chemokine and cytokine production in the lower airways of health adults. These substances attract and activate leukocytes. They are associated with the pathophysiology of asthma and allergic rhinitis.

TABLE VI–5 STUDIES OF HUMAN RESPIRATORY AND IMMUNOLOGICAL EFFECTS, 2000–2002—Continued

Authors, year	Description	Key results
Svartengren *et al.,* 2000	Twenty nonsmoking subjects with mild allergic asthma were exposed for 30 minutes to high and low levels of engine exhaust air pollution on two separate occasions at least four weeks apart. Respiratory symptoms and pulmonary function were measured immediately before, during and after both exposure periods. Four hours after each exposure, the test subjects were challenged with a low dose of inhaled allergen. Lung function and asthmatic reactions were monitored for several hours after exposure.	Subjects with $PM_{2.5}$ exposure_100 μg/m³ exhibited slightly increased asthmatic responses. Associations with adverse outcome variables were weaker for particulates than for NO_2.

TABLE VI–6.—REVIEW ARTICLES ON RESPIRATORY AND IMMUNOLOGICAL EFFECTS, 1999–2002

Authors, Year	Description	Key results
Gavett and Koren, 2001	Summarizes results of EPA studies done to determine whether PM can enhance allergic sensitization or exacerbate existing asthma or asthma-like responses in humans and animal models.	Studies indicate that PM enhances allergic sensitization in animal models of allergy and exacerbate inflammation and airway hyper-responsiveness in asthmatics and animal models of asthma.
Pandya *et al.* 2002	Reviews human and animal research relevant to question of whether DPM is associated with asthma.	Evidence indicates that DPM is associated with the inflammatory and immune responses involved in asthma, but DPM appears to have a far greater impact as an adjuvant with allergens than alone. DPM appears to augment IgE, trigger eosinophil degranulation, and stimulate release of numerous cytokines and chemokines. DPM may also promote the cytotoxic effects of free radicals in the airways.
Patton and Lopez, 2002	Review of evidence and mechanisms for the role of air pollutants in allergic airway diseases.	Evidence suggests that air pollutants (including DPM) ''affect allergic response by different mechanisms. Pollutants may increase total IgE levels and potentiate the initial sensitization to allergens and the IgE response to a subsequent allergen exposure. Pollutants also may act by increasing allergic airway inflammation and by directly stimulating airway inflammation. In addition, it is well known that pollutants can be direct irritants of the airways, increasing symptoms in patients with allergic syndromes.''
Peden, 2002	Review of ''studies that exemplify the impact of ozone, particulates, and toxic components of particulates on asthma.''.	DPM ''may play a significant role not only in asthma exacerbation but also in T_H2 inflammation via the actions of polyaromatic hydrocarbons on B lymphocytes.'' ''* * * PM in which the active agents are biologically active metal ions and organic residues * * * may have significant effects on asthma, especially modulating immune function, as demonstrated by the role of polyaromatic hydrocarbons from diesel exhaust in IgE production.''
Sydbom *et al.* 2001	Review of scientific literature on health effects of diesel exhaust, especially the DPM components.	The epidemiological support for particle effects on asthma and respiratory health is very evident; and respiratory, immunological, and systemic effects of DPM have been documented in a wide variety of experimental studies. Acute effects of DPM exposure include irritation of the nose and eyes, lung function changes, and airway inflammation. Exposure studies in healthy humans have documented a number of profound inflammatory changes in the airways, notably, before changes in pulmonary function can be detected. Such effects may be even more detrimental in subjects with compromised pulmonary function. Ultrafine particles are currently suspected of being the most aggressive particulate component of diesel exhaust.

TABLE VI–7.—STUDIES RELATING TO CARDIOVASCULAR AND CARDIOPULMONARY EFFECTS, 2000–2002

Authors, Year	Description	Key Results
Lippmann *et al.,* 2000	Day-to-day fluctuations in particulate air pollution in the Detroit area were compared with corresponding fluctuations in daily deaths and hospital admissions for 1985–1990 and 1992–1994.	After adjustment for the presence of other pollutants, significant associations were found between particulate levels and an increased risk of death due to circulatory causes. However, relative risks were about the same for $PM_{2.5}$ and larger particles.
Magari *et al.*, 2001	Longitudinal study of a male occupational cohort examined the relationship between $PM_{2.5}$ exposure and cardiac autonomic function.	After adjusting for potential confounding factors such as age, time of day, and urinary nicotine level, $PM_{2.5}$ exposure was significantly associated with disturbances in cardiac autonomic function.
Pope *et al.*, 2002	Prospective cohort mortality study, based on data collected for Cancer Prevention II study, which began in 1982. Questionnaires were used to obtain individual risk factor data (age, sex, race, weight, height, smoking history, education, marital status, diet, alcohol confounders, and occupational exposures). For about 500,000 adults, these were combined with air pollution data for metropolitan areas throughout the United States and with vital status and cause of death data through 1998.	After adjustment for other risk factors potential using a variety of statistical consumption, and methods, fine particulate ($PM_{2.5}$) exposures were significantly associated with cardiopulmonary mortality (and also with lung cancer). Each 10-μg/m^3 increase in mean level of ambient fine particulate air pollution was associated with an increase of approximately 6 percent in the risk of cardiopulmonary mortality.
Samet *et al.*, 2000a, 2000b	Time series analyses were conducted on data from the 20 and 90 largest U.S. cities to investigate relationships between PM_{10} and other pollutants and daily mortality.	Results of both the 20-city and 90-city mortality analyses are consistent with an average increase in cardiovascular and cardiopulmonary deaths of more than 0.5% for every 10 μg/m^3 increase in PM_{10} measured the day before death.
Wichmann *et al.*, 2000	Time series analyses were conducted on data from Erfurt, Germany to investigate relationships between the number and mass concentrations of ultrafine and fine particles and daily mortality.	Higher levels of both fine and ultrafine particle concentrations were significantly associated with increased mortality rate.

TABLE VII.–8.—STUDIES AND REVIEW OF ARTICLE ON CANCER EFFECTS, 2000–2002

Authors, year	Description	Key results
Boffetta *et al*, 2001	Cohort studied was entire Swedish working population (other than farmers). Job title and industry were classified according to probability and intensity of diesel exhaust exposure for years 1960 and 1970, and according to authors' confidence in assessment. Cohort members followed up for mortality for 19-year period from 1971 through 1989. Cause of death, specific cancer type, when applicable, obtained through national registries.	Relative risks (RR) of lung cancer among men were 0.95, 1.1, and 1.3 for job categories with low, medium, and high exposure to diesel exhaust compared to workers in jobs classified as having no occupational exposure. Elevated risks for medium and high exposure groups were statistically significant, and no similar pattern was observed for other cancer types.
Gustavsson *et al*, 2000	Case-control study involving all 1,042 male cases of lung cancer and 2,364 randomly selected controls (matched by age and inclusion year) in Stockholm County, Sweden from 1985 through 1990. Occupational exposure, smoking habits, and other risk factors assessed based on written questionnaires mailed to subjects or next of kin. Relative Risk (RR) estimates adjusted for age, selection year, tobacco smoking, residential radon, occupational exposures to asbestos and combustion products, and environmental exposure to NO^2.	Adjusted RR for the highest quartile of estimated lifetime exposure was 1.63, compared to the group with no exposure.
Pope *et al.*, 2002	Prospective cohort lung cancer mortality study using data collected for the American Cancer Society Cancer Prevention II Study (began 1982). Questionnaires used to obtain individual risk factor data including age, sex, race, weight, height, smoking history, education, marital status, diet, alcohol consumption, and occupational exposures. This risk factor data combined with air pollution data for metropolitan areas throughout United States and vital status and cause of death data through 1998 for about 500,000 adults.	After adjusting for other risk factors and potential cofounders, chronic $PM_{2.5}$ exposures found to be significantly associated with elevated lung cancer mortality. Each 10 g/m^3 increase in mean level of ambient fine particulate air pollution associated with statistically significant increase of approximately 8 percent in risk of lung cancer mortality.

TABLE VII.–8.—STUDIES AND REVIEW OF ARTICLE ON CANCER EFFECTS, 2000–2002—Continued

Authors, year	Description	Key results
Boffetta and Silverman, 2001	Meta-analysis performed on 44 independent results from 29 distinct studies of bladder cancer in occupational groups having varying exposure to diesel exhaust (studies included only if at least 5 years between first exposure and bladder cancer development). Separate quantitative meta-analyses performed for heavy equipment operators, truck drivers, bus drivers, and studies with semi-quantitative exposure assessments based on a job exposure matrix (JEM).	Overall Relative Risk (RR) was 1.37 for heavy equipment operators, 1.17 for truck drivers, 1.33 for bus drivers, and 1.13 for JEM. Quantitiatives meta-analysis also performed on 8 independent studies showing results for ''high'' diesel exposure. Combined results were RR=1.23 for ''any exposure,'' and RR=1.44 for ''high exposure.''
Zeegers *et al.*, 2001	Prospective case-cohort study involving 98 bladder cancer cases among men occupationally exposed to diesel exhaust. A cohort of 58,279 men who were 55–69 years old in 1986 was followed up through 1992. Exposure assessed by job history given on self- administered questionnaire, combined with expert assessment of exposure probability. ''Cumulative probability of exposure'' determined by multiplying job duration by exposure probability. Four categories of relative cumulative exposure probability defined: none, lowest third, middle third, highest third. Relative risks adjusted for age, cigarette smoking, and exposure to other occupational risk factors.	Relative risk for category with highest cumulative probability of exposure was 1.17.
Ojajarvi *et al*, 2000	Meta-analysis of 161 independent results (populations) from 92 studies on relationship between worksite exposures and pancreatic cancer.	Based on 20 populations, no elevated risk associated with diesel exposure. Combined relative risk was 1.0. This result consistent with existing risk assessment which identified lung and bladder cancer as the only forms of cancer for which there was evidence of an association with DPM exposure.
Szadkowska-stanczyk and Ruszkowska, 2000.	Literature review of studies relating to carcinogenic effects of diesel emissions. (Article in Polish; MSHA had access only to English translation of Abstract.).	Authors conclude long-term exposure (>20 years) associated with 30% to 40% increase in lung cancer risk in workers in transport industry.

TABLE VI–8.—STUDIES ON TOXICOLOGICAL EFFECTS OF DPM EXPOSURE, 2000–2002

Authors, Year	Description	Key results	Agent(s) of toxicity
Al-Humadi *et al.,* 2002	IT instillation in rats of 5 mg/kg saline, DPM, or carbon black.	Exposure to DPM or carbon black augments OVA sensitization; particle composition (of DPM) may not be critical for adjuvant effect.	DPM and carbon black particles.
Bünger *et al.,* 2000	In Vitro: assessment of content of polynuclear aromatic compounds and mutagenicity of DPM generated from four fuels, Ames assay used.	Production of black carbon and polynuclear aromatic engine compounds that are mutagenic; correlation with sulfur content of fuel and engine speed.	DE generated from diesel engine DPM collected on filters and soluble organic extracts prepared.
Carero *et al.,* 2001	In Vitro: assessment of DPM, carbon black, and urban particulate matter genotoxicity, human alveolar epithelial cells used.	DNA damage produced, but no cytotoxicity produced.	DPM, urban particulate matter (UPM), and carbon black (CB). DPM, UPM purchased from NIST, CB purchased from Cabot.
Castranova *et al.,* 2001	In Vitro: assessment of DPM on alveolar macrophage functions and role of adsorbed chemicals; rat alveolar macrophages used. In Vivo: assessment of DPM on alveolar macrophage functions and role of adsorbed chemicals, use of IT instillation in rats.	DPM depresses antimicrobial potential of macrophages, thereby increasing susceptibility of lung to infections, this inhibitory effect due to adsorbed chemicals rather than carbon core of DPM.	No information on generation of DPM (details may be found in previous publications from this lab).

TABLE VI–8.—STUDIES ON TOXICOLOGICAL EFFECTS OF DPM EXPOSURE, 2000–2002—Continued

Authors, Year	Description	Key results	Agent(s) of toxicity
Fujimaki *et al.,* 2001	In Vitro: assessment of cytokine production, spleen cells used. In Vivo: assessment of cytokine production profile following IP sensitization to OA and subsequent exposure to 1.0 mg/mg^3 DE for 12 hr/day, 7 days/week over 4 weeks, mouse inhalation model used.	Adverse effects of DE on cytokine and antibody production by creating an imbalance of helper T-cell functions.	DE generated from diesel engine DPM, CO_2, SO_2 NO/NO_2/NO_X measured.
Gilmour *et al.,* 2001	In Vivo: assessment of infectivity and allergenicity following exposure to woodsmoke, oil furnace emissions, or residual oil fly ash, mouse inhalation model used, IT instillation used in rats.	Exposure to woodsmoke increased susceptibility to and severity of streptococcal infection, exposure to residual oil fly ash increased pulmonary hypersensitivity reactions.	Woodsmoke, oil furnace emissions, and residual oil fly ash (ROFA) used
Hsiao *et al.*, 2000	In Vitro: assessment of cytotoxic effects (cell proliferation, DNA damage) of PM2.5 (fine PM) and PM2.5–10 (coarse PM), rat embryo fibroblast cells used.	Seasonal variations in PM, in their solubility, and in their ability to produce cytotoxicity. Long-term exposure to non-killing doses of PM may lead to accumulation of DNA lesions.	PM collected Hong Kong area and solvent- extractable organic compounds used.
Kuljukka-Rabb *et al.*, 2001	In Vitro: assessment of of adduct formation following exposure to DPM, DPM extracts, benzo[a]pyrene, or 5-methylchrysene, mammary carcinoma cells used.	Temporal and dose-dependent DNA adduct formation by PAHs. Carcinogenic PAHs from diesel extracts lead to stable DNA adduct formation.	Some DPM purchased from NIST, some DPM collected on filters from diesel vehicle, and solvent-extractable organic compounds used.
Moyer *et al.*, 2002	In Vivo: 2-phase retrospective study, review of NTP data from 90-day and 2-yr exposures to particulates, use of mouse inhalation model.	Induction and/or exacerbation of arteritis following chronic exposure (beyond 90-day) to particulates.	Indium phosphide, cobalt sulfate heptahydrate, vanadium pentoxide, gallium arsenide, nickel oxide, nickel subsulfide, nickel sulfate hexahydrate, talc, molybdenum trioxide used.
Saito *et al.*, 2002	In Vivo: assessment of cytokine expression following exposure to DE (100 μg/m3 or 3 mg/m3 DPM) for 7-hrs/day × 5 days/wk × 4 wks, mouse inhalation model used..	DE alters immunological responses in the lung and may increase susceptibility to pathogens, low-dose DE may induce allergic/asthmatic reactions.	DE generated from diesel engine DPM, CO, SO2, and NO2 measured.
Sato *et al.*, 2000	In Vivo: assessment of mutant frequency and mutation spectra in lung following 4–wk exposure to 1 or 6 mg/m^3 DE, transgenic rat inhalation model used.	DE produced lesions in DNA and was mutagenic in rat lung.	DE generated from light-duty diesel engine Concentration of suspended particulate matter (SPM) measured, 11 PAHs and nitrated PAHs identified and quantitated in SPM.
Van Zijverden *et al.,* 2000	In Vivo: assessment of immunomodulating capacity of DPM, carbon black, and silica particles, mouse model used (sc injection into hind footpad).	DPM skew immune response toward T helper 2 (Th2) side, and may facilitate initiation of allergy.	DPM, carbon black particles (CBP) and silica particles (SIP) used. DPM donated by Nijmegen University, CBP and SIP purchased from BrunschwichChemie and Sigma Chemical Co., respectively.
Vincent *et al.,* 2001	In Vivo: assessment of cardiovascular effects following 4–hr exposure to 4.2 mg/m^3 diesel soot, 4.6 mg/m^3 carbon black, or 48 mg/m^3 ambient urban particulates, rat inhalation model used.	Increases in endothelin -1 and -3 (two vasoregulators) following ambient urban particulates and diesel soot exposure. Small increases in blood pressure following exposure to ambient urban particulates.	Diesel soot, carbon black and urban air particulates used. Diesel soot purchased from NIST, carbon black donated by University of California, urban air particulates collected in Ottawa.
Walters *et al.,* 2001	In Vivo: assessment of airway reactivity/responsiveness, and BAL cells and BAL cytokines following exposure to 0.5 mg/mouse aspirated DPM, ambient PM, or coal fly ash.	Dose and time-dependent changes in airway responsiveness and inflammation following exposure to PM. Increase in BAL cellularity following exposure to DMP, but airway reactivity/ unchanged.	DPM, PM, and coal fly ash used. DPM purchased from NIST, PM collected in Baltimore, and coal fly ash obtained from Baltimore power plant.

TABLE VI–8.—STUDIES ON TOXICOLOGICAL EFFECTS OF DPM EXPOSURE, 2000–2002—Continued

Authors, Year	Description	Key results	Agent(s) of toxicity
Whitekus *et al.,* 2002	In Vitro: assessment of ability of six antioxidants to interfere in DPM-mediated oxidative stress, cell cultures used. In Vivo: assessment of sensitization to OA and/or DPM and possible modulation by thiol antioxidants, mouse inhalation model used.	Thio antioxidants (given as a pretreatment) inhibit adjuvant effects of DPM in the induction of OA sensitization.	DE generated from light-duty diesel engine, DPM collected, dissolved in saline, and aerosolized.

*Key:
(A) immunological and/or allergic reactions.
(B) inflammation.
(C) mutagenicity/DNA adduct formation.
(D) Induction of free oxygen radicals.
(E) airflow obstruction.
(F) impaired clearance.
(G) reduced defense mechanisms.
(H) adverse cardiovascular effects.

TABLE VI–9.—REVIEW ARTICLES ON TOXICOLOGICAL EFFECTS OF DPM EXPOSURE, 2000–2002

Authors, Year	Description	Conclusions	Agent(s) of toxicity
ILSI Risk Science Institute Workshop Participants, 2000.	Review of rat inhalation studies on chronic exposures to DPM and to other poorly, soluble nonfibrous particles of low acute toxicity that are not directly genotoxic.	No overload of rat lungs at lower lung doses of DPM and no lung cancer hazard anticipated at lower doses.	Poorly soluble particles, nonfibrous particles of low acute toxicity and not directly genotoxic (PSPs)
Nikula, 2000	Review of animal inhalation studies on chronic exposures to DE, carbon black, titanium dioxide, talc and coal dust.	Species differences in pulmonary retention patterns and lung tissue responses following chronic exposure to DE.	DE, carbon black, titanium dioxide, talc and coal dust
Oberdoerster, 2002	In Vivo: review of toxicokinetics and effects of fibrous and nonfibrous particles.	High-dose rat lung tumors produced by poorly soluble particles of low cytotoxicity (*e.g.,* DPM) not appropriate for low-dose extrapolation (to humans); lung overload occurs in rodents at high doses.	Fibrous particles, and nonfibrous particles that are poorly soluble and have low cytotoxicity (PSP)
Veronesi and Oortigiesen, 2001	In Vitro: review of nasal and pulmonary innervation (receptors) and pulmonary responses to PM, mainly BEAS cells and sensory neurons used.	Pulmonary receptors stimulated/activated by PM, leading to inflammatory responses.	PM: residual oil fly ash, woodstove emissions, volcanic dust, urban ambient particulates, coal fly ash, and oil fly ash.

*Key:
(A) immunological and/or allergic reactions.
(B) inflammation.
(C) mutagenicity/DNA adduct formation.
(D) Induction of free oxygen radicals.
(E) airflow obstruction.
(F) impaired clearance.
(G) reduced defense mechanisms.
(H) adverse cardiovascular effects.

VII. Feasibility

A. Background on Feasibility

Section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires the Secretary of Labor to establish health standards which most adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health or functional capacity over his or her working lifetime. Such standards must be based upon:

Research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the miner, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this or other health and safety laws. Whenever practicable, the mandatory health or safety standard promulgated shall be expressed in terms of objective criteria and of the performance desired. (Section 101(a)(6)(A)).

The legislative history of the Mine Act states:

This section further provides that ''other considerations'' in the setting of health standards are ''the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.'' While feasibility of the standard may be taken into consideration with respect to engineering controls, this factor should have a substantially less significant role. Thus, the Secretary may appropriately consider the state of the engineering art in industry at the time the standard is promulgated. However, as the circuit courts of appeals have recognized, occupational safety and health statutes should be viewed as ''technology-

forcing'' legislation, and a proposed health standard should not be rejected as infeasible ''when the necessary technology looms on today's horizon''. AFL–CIO v. Brennan, 530 F.2d 109 (3d Cir. 1975); Society of Plastics Industry v. OSHA, 509 F.2d 1301 (2d Cir. 1975), cert. denied, 427 U.S. 992 (1975). Similarly, information on the economic impact of a health standard which is provided to the Secretary of Labor at a hearing or during the public comment period, may be given weight by the Secretary. In adopting the language of [this section], the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure. S. Rep. No. 95–181, 95th Cong. 1st Sess. 21 (1977).

Though the Mine Act and its legislative history are not specific in defining feasibility, the courts have clarified the meaning of feasibility. The Supreme Court, in *American Textile Manufacturers' Institute* v. *Donovan* (OSHA Cotton Dust), 452 U.S. 490, 508–509 (1981), defined the word ''feasible'' as ''capable of being done, executed, or effected.''

In promulgating standards, hard and precise predictions from agencies regarding feasibility are not required. The ''arbitrary and capricious test'' is usually applied to judicial review of rules issued in accordance with the Administrative Procedures Act. The legislative history of the Mine Act indicates that Congress explicitly intended the ''arbitrary and capricious test'' be applied to judicial review of mandatory MSHA standards. ''This test would require the reviewing court to scrutinize the Secretary's action to determine whether it was rational in light of the evidence before him and reasonably related to the law's purposes.'' S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977).

Thus, MSHA must base its predictions on reasonable inferences drawn from existing facts. In order to establish the economic and technological feasibility of a new rule, an agency is required to produce a reasonable assessment of the likely range of costs that a new standard will have on an industry, and the agency must show that a reasonable probability exists that the typical firm in an industry will be able to develop and install controls that will meet the standard.

B. Technological Feasibility

At this stage of the rulemaking, MSHA concludes that a permissible exposure limit of 308 micrograms of EC per cubic meter of air (308_{EC} μg/m^3) is technologically feasible for the metal and nonmetal underground mining industry. Courts have ruled that in order for a standard to be technologically feasible an agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *United Steelworkers of America, AFL–CIO–CLC* v. *Marshall,* (OSHA Lead) 647 F.2d 1273 (D.C. Cir. 1981) cert. denied, 453 U.S. 918 (1981) (citing *American Iron and Steel Institute* v. *OSHA*, (AISI–I) 577 F.2d 825 (3d Cir. 1978) at 834; and, *Industrial Union Dep't., AFL–CIO* v. *Hodgson*, 499 F.2d 467 (D.C. Cir.1974)). The existence of general technical knowledge relating to materials and methods which may be available and adaptable to a specific situation establishes technical feasibility. A control may be technologically feasible when Aif through reasonable application of existing products, devices or work methods with human skills and abilities, a workable engineering control can be applied'' to the source of the hazard. It need not be an ''off-the-shelf'' product, but ''it must have a realistic basis in present technical capabilities.'' (*Secretary of Labor* v. *Callanan Industries, Inc.* (Noise), 5 FMSHRC 1900 (1983)).

The Secretary may also impose a standard that requires protective equipment, such as respirators, if technology does not exist to lower exposures to safe levels. See *United Steelworkers of America, AFL–CIO–CLC* v. *Marshall,* (OSHA Lead) 647 F.2d 1164.

MSHA has established that technology is available that can accurately and reliably measure miners' exposures to DPM in all types of underground metal and nonmetal mines. MSHA intends to sample miners' exposures by using a respirable dust sampler equipped with a submicrometer impactor and analyze samples for the amount of elemental carbon using the NIOSH Analytical Method 5040, or any other method that NIOSH determines gives equal or improved accuracy, as stated in existing § 57.5061(b) and in this proposed rule.

MSHA is changing the surrogate that it uses to measure DPM exposures from total carbon (TC) to elemental carbon (EC). This change will avoid interferences associated with organic carbon that could collect on the filter and increase the likelihood of contaminating the sample with OC from non-diesel sources. MSHA agreed to propose this change as dictated by the DPM Settlement Agreement and the entire mining community supports this change.

Control mechanisms also exist that are capable of reducing DPM exposures to the interim PEL of 308 micrograms in all types of underground metal and nonmetal mines. MSHA believes that mine operators will choose from various control options that are currently available, including diesel particulate filter (DPF) systems, ventilation upgrades, oxidation catalytic converters, alternative fuels, fuel aditives, enclosures such as cabs and booths, improved maintenance procedures, newer engines (less DPM emitting), and various work practices and administrative controls. MSHA has given the mining industry flexibility in selecting DPM control options that best suit the mine operator's specific needs.

Based on the current information in the rulemaking record, MSHA concludes that it has a technologically feasible measurement method that operators and the Agency can use to accurately determine if miners' exposures exceed the limit. Both control mechanisms and the DPM sampling method are discussed elsewhere in this preamble. MSHA believes that the proposed standard would adequately address feasibility issues in one of two ways:

(1) Pursuant to § 57.5060(a) and (d) of the proposed rule. If MSHA determines that feasible engineering and administrative controls are being installed, used, and maintained and still do not reduce a miner's exposure to the limit, mine operators would be required to supplement controls with a respiratory protection program; or,

(2) Mine operators may apply to the MSHA district manager for approval for an extension of time in which to reduce miners' exposures to the DPM limit. MSHA is not proposing any maximum limit on the number of extensions an operator may have, since MSHA's decision hinges upon feasibility.

The proposal permits operators greater flexibility in complying with the DPM limit, contrary to the existing prohibition against using administrative controls and respiratory protection. Mine operators who need on-site technical assistance should contact the respective MSHA district manager for assistance. MSHA will continue to assist mine operators in special mining situations that could affect the successful use of DPM filters.

Section IV above contains the executive summary of the 31-Mine Study. As that section explains, the technical feasibility analyses in the 31-Mine Study were based on the highest DPM sample result obtained at each

mine and on all major DPM emission sources at each mine in addition to spare equipment. The study found that five mines were already in compliance with the interim concentration limit, and another two mines were already in compliance with the existing lower, final concentration limit.

MSHA predicted that eleven of the 31 mines could achieve compliance with both limits through installation of DPM filters alone. Ventilation upgrades were specified for only 5 of the 31 mines in this study, and then only to achieve the final concentration limit. MSHA projected that compliance with the interim and final concentration limits could be achieved without requiring major ventilation installations such as new main fans and repowering main fans. In the existing standard, the agency based its feasibility projections on an average DPM concentration level of over 800 $\mu g/m^3$. MSHA believes that miners' exposures are now much lower, probably as a result of the introduction of clean engines, better maintenance, and the elimination of interferences as confirmed by MSHA's compliance assistance baseline sampling.

MSHA collected baseline samples at most underground mines with diesel powered equipment. Samples were collected in the same manner as MSHA intends to sample for enforcement under the proposed rule. MSHA found the average exposure (based on EC $\times$ 1.3) in the baseline sampling to be 222 $\mu g/m^3$ resulting in greater compliance feasibility with the proposed rule.

In spite of the concentrations observed in the 31-Mine Study, the industry parties in the litigation continued to stress that compliance with the existing standard was infeasible in that DPF systems could not be retrofitted properly and could not effectively achieve regeneration. Some operators also noted that they experienced difficulty in ordering and obtaining DPF systems. MSHA could not confirm these statements, but during the 31-Mine Study, the Agency did not find that mine operators were using filtration devices. Moreover, few mine operators actually contacted MSHA to ask for compliance assistance visits, in spite of the Agency's repeated offers to help. Once MSHA initiated its comprehensive compliance assistance work at underground mine sites, the Agency found that most mines did not have complete information on the available control technologies. Accordingly, MSHA stated in its final report on the 31-Mine Study regarding feasibility:

> Compliance with both the interim and final concentration limits may be both technologically and economically feasible for metal and nonmetal underground mines in the study. MSHA, however, has limited in-mine documentation on DPM control technology. As a result, MSHA's position on feasibility does not reflect consideration of current complications with respect to implementation of controls such as retrofitting and regeneration of filters. MSHA acknowledges that these issues influence the outcome of feasibility of controls. The agency is continuing to consult with NIOSH, industry and labor representatives on the availability of practical mine worthy filter technology.

Since this finding, however, MSHA and NIOSH have been working with the metal and nonmetal underground mining community and equipment manufacturers to continually refine and improve application of existing DPM control technology. The Agency has made considerable strides in resolving mine operators' concerns with the mine worthiness of DPF systems.

During data collection for the 31-Mine Study, mine operators also questioned the performance of the SKC sampler, especially in light of modifications to it. Additionally, some commenters requested that MSHA revise its internal sampling methodology and analysis for inspectors and laboratory personnel.

MSHA disagrees. One of the objectives of the 31-Mine Study was to examine the performance of the SKC sampler. The Agency is satisfied with the performance of the SKC cassette in collecting DPM while avoiding mineral dust. NIOSH's laboratory and field data show that the SKC cassette collected DPM efficiently. Under a side protocol of the 31-Mine Study, MSHA tested the efficiency of the SKC cassette in avoiding mineral dust at four mines. In these tests, no mineral dust was measured on the filters of the SKC samplers. This finding was confirmed by NIOSH laboratory tests. However, NIOSH discovered that in many cases, the DPM deposit area was irregular in shape, and the shapes varied among samples. Since the DPM deposit area is used to calculate carbon concentrations attributed to DPM, the varied shapes can cause an error in determining DPM concentrations. With the cooperation of MSHA and the technical recommendations and extensive experimental verification by NIOSH, SKC was able to modify the cassette design to produce a consistent and regular DPM deposit area, satisfactorily resolving the problem.

The fact that the deposit area was assumed constant when in fact there were variations in the boundary (shape) and area of deposit of the SKC cassette samples taken in the 31-Mine Study affects only the reported concentrations of the carbon values (EC, OC, and TC) because deposit area is used in concentration calculation. The results of the inter-laboratory and intra-laboratory studies that compared the analysis of the punches of those (or any) filters from the SKC cassette are unaffected for two reasons: (1) The deposit area does not enter into the calculations (surface densities of carbon in ug/cm^2 were compared), and (2) the punches were taken from filters inside the boundary of the area of deposits, where the deposits were uniform.

In their comments to the ANPRM, mine operators continued to emphasize the need for more research on control technology. Additionally, NIOSH commented:

> In conclusion, various manufacturers offer the particulate filters for diesel engines rated from 15 to several hundred hp. Although on the market for more than a decade, DPF systems have been only sporadically deployed and tested on underground mining vehicles. The DEEP-sponsored evaluation tests at Noranda BM&S and INCO Stobie Mines are based on our knowledge, the best organized attempts to evaluate DPFs in the underground environment. The results from these tests reveal that the DPF systems that have been evaluated on heavy-duty vehicles powered by engines rated over 277 hp and on light duty vehicles powered by 50 hp engines offer promising technology. However, this technology needs significant additional evaluation and some possible re-engineering for underground mining applications. In-use deficiencies, secondary emissions, engine backpressure, DPF regeneration, DPF reliability and durability are major issues requiring additional research and engineering. In addition, it is been found that deployment of most systems, particularly those which require active means of regeneration, require major changes in miners' attitudes toward engine and DPF maintenance. NIOSH's DEEP experienced showed that emission-based engine maintenance, greater discipline on the part of the vehicle operator, and better operational logistics (*e.g.*, multiple locations of regeneration stations for a single vehicle) are imperative for success of DPF technology.

To the contrary, the NIOSH comments in response to the ANPRM include a summary of their experience with retrofitting existing diesel powered equipment. NIOSH acknowledges that although diesel particulate filters have been available to U.S. mines for many years, they have not been extensively used and documented. NIOSH states that in-mine experience with filters is limited, but NIOSH also related their experience with the Diesel Emissions Evaluation Program (DEEP) in Canada. NIOSH stated:

[The DEEP program] has shown that these filters have significant potential for reducing DPM exposure of miners, but that there are numerous technical and operational issues that need to be addressed through research and in-mine evaluations before they can be readily implemented on a broad-based scale in U.S. mines.

MSHA has found that most mine operators can successfully resolve their implementation issues if they make informed decisions regarding filter selection, retrofitting, engine and equipment deployment, operations, and maintenance. The Agency recognizes that practical mine-worthy DPF systems for retrofitting most existing diesel powered equipment in underground metal and nonmetal mines are commercially available and are mine worthy to effectively reduce miners' exposures to DPM. MSHA also recognizes that installation of DPF systems will require mine operators to work through technical and operational situations unique to their specific mining circumstances. In view of that, MSHA has provided comprehensive compliance assistance to the underground metal and nonmetal mining industry.

Commenters to the ANPR responded to the question of changing a diesel engine model to accommodate a control device by stating that anything other than the original engine model is essentially incompatible and would require prohibitive design engineering analysis and implementation. MSHA agrees that it may not be feasible to change engines on some diesel powered equipment. However, as engine manufacturers develop cleaner engines over time, they are phasing out older models and newer, cleaner engine models are available from the same engine manufacturer. In some cases, the new engine models are direct replacements for an older model. The benefits of retrofitting a machine with a cleaner engine are better fuel economy, less DPM emitted from the tailpipe, better lubrication systems, and better diagnostic tools, especially with the electronic engines. A cleaner engine that emits less DPM will deposit less DPM on the filter, thus permitting more time between regeneration, especially in active regeneration systems or combination active/passive regeneration systems.

Filter Workshops

Recently, government, labor and industry sponsored two workshops on ''Diesel Emissions and Control Technologies in Underground Metal and Nonmetal Mines'' held in Cincinnati, Ohio, on February 27, 2003, and Salt Lake City, Utah, on March 4, 2003. These workshops focused on implementation of DPM control technologies capable of reducing DPM exposures to particulate matter and gaseous emissions from diesel-powered vehicles that are presently available to the underground metal and nonmetal mining industry in this country. The workshops provided an excellent forum for open discussion and the exchange of ideas and experiences relative to the use of diesel powered equipment in underground mines.

At the workshops, industry experts discussed issues pertaining to the installation and use of DPFs in underground mines. Application of technology and mine operators' experiences with using filters on their diesel powered equipment are becoming more commonplace in the mining industry since the promulgation of the DPM rule.

MSHA, NIOSH, and industry speakers presented their first-hand experiences with the implementation and use of diesel particulate filters in underground mines since promulgation of the existing DPM rule. Major diesel filter manufacturers and vendors of control technologies and engines also participated in the workshops.

NIOSH compiled a summary report to capture presentations, comments and discussions rendered at the workshops, including comments offered by industry representatives who shared their experiences with the effectiveness of DPM filters. MSHA believes that NIOSH's account of the workshops helps to demonstrate feasibility of control technology measures that mine operators have found beneficial and effective. MSHA mailed copies of the NIOSH report to mine operators covered by the proposed rule. This information also is available on the NIOSH Diesel List Server. At the workshops, the following information was discussed:

DPF Efficiency: Laboratory and field studies indicate that filtration efficiency for elemental carbon is above 95% and perhaps is as high as 99%.

MSHA worked with NIOSH at MSHA's laboratory to determine the efficiency of several ceramic filters. MSHA ran steady state tests on the dynamometer and collected DPM samples for NIOSH 5040 analysis. The results of the filter tests showed efficiency results close to 99% for elemental carbon. NIOSH commented:

The INCO project includes two Kubota M5400 tractors powered by Kubota F2803B 50 hp engines [Stachulak 2002]. Both are fitted with actively regenerated DPFs that have a silicon carbide (SiC) filter core. The SiC cores come from the same manufacturer; the DPF systems are supplied by different manufacturers. The filtration efficiency at the tailpipe is >99 percent for EC as determined by NIOSH using the EchoChem Analytics PAS 2000 carbon particle analyzer. One DPF system uses active on-board regeneration; electric heating coils are integrated into the unit and the unit is plugged into a regeneration controller mounted off board. The other unit is an active off-board system in which the DPF is removed from the vehicle and exchanged with the previously regenerated filter. The soot-laden filter is placed in a regeneration station. Both vehicles are assigned to ''special groups'' of individuals who ensure that the regenerations are performed as needed.

MSHA stated in the preamble to the January 19, 2001 Final Rule that filter efficiency for cordierite and silicon carbide media used in many DPF systems is 85% and 87% respectively for diesel DPM. These efficiencies were based on whole diesel particulate as collected per part 7, subpart E specifications for measuring DPM. The mining industry has expressed concern that laboratory results do not reflect the real world in both duty cycle and operational environment, so the Metal and Nonmetal Diesel Partnership and MSHA will conduct a set of in-mine tests before mid-2003.

DPF Selection: To use DPF systems successfully, mine operators must do their homework prior to ordering DPF systems. It is critical for filter performance and efficiency to match the filters to the diesel powered equipment and consider how the equipment is to be used in the underground mine. Mine operators should assume that every application is unique.

Following promulgation of the existing DPM rule, most mine operators were unaware that filter selection involves consideration of these factors. Therefore, in February 2003, MSHA and NIOSH posted on their web sites a comprehensive compliance assistance tool titled ''A DPM Filter Selection Guide for Diesel Equipment In Underground Mines'' (Filter Selection Guide). The guide provides mine operators with detailed step-by-step considerations in selecting DPF system compatible with the specific equipment. Also, the Filter Selection Guide provides information on modifications and adjustments to diesel powered equipment that mine operators may have to make to successfully apply DPF systems.

Mine operators should start by making certain that they are properly maintaining their engines and not consuming excessive amounts of crankcase oil. The mine operator may then obtain exhaust temperature logs or traces for several shifts, and use these

traces to select the DPF systems with the regeneration options that will work for that piece of equipment. Exhaust temperature traces can be analyzed by mine personnel or given to several DPF suppliers to use to provide the operator with options.

Exhaust temperatures govern the DPF regeneration options. These options are provided in the Table VII–1.

TABLE VII–1.—DPF REGENERATION OPTIONS

Temperature that the exhaust exceeds 30% of the time, degrees C	DPF system (media consists of cordierite or silicon carbide ceramic)	Comments
>550	Uncatalyzed media	Rarely, if ever, occurs.
>390–420	Base metal catalyzed cordierite	No increase in NO_2.
>340	Lightly platinum catalyzed ceramic with CDT fuel additive.	Special provisions must be made to ensure additive is always present in fuel and that equipment w/o DPFs cannot be fueled with additive-containing fuel. No increase in NO_2.
>325	Platinum catalyzed ceramic	Lab results indicate significant NO to NO_2 conversion; field results are mixed.
>Any temperature below 325	Active (Manually) regenerated system	Insufficient exhaust temperature to support spontaneous regeneration during shift. DPFs are regenerated in place with equipment off-duty or DPF is swapped out.

As Table VII–1 shows, a DPF system will function successfully at or above an exhaust gas temperature specified by the manufacturer's regeneration temperature, that is, an active regenerating system will work at all exhaust temperatures, and a platinum catalyzed system at any temperature above 325°C. However, these exhaust gas temperatures must be achieved at least 30% of the time during the day to be sufficient for passive regeneration. In addition, the tune of the engine will also be a factor for proper regeneration. If an engine goes out of tune and begins to emit higher DPM concentrations in the exhaust, the exhaust backpressure may increase more quickly. Therefore, it is recommended that mine operators install backpressure devices on machines equipped with filters in order to properly monitor the condition of the filter and regeneration of the filter.

Table VII–1 also provides information in the ''Comments'' column on the effect of the filters coated with a catalyst on NO_2 emissions. MSHA has tested in their laboratory the types of filters listed and has posted on its Web site a list of the filters that can cause NO_2 increases from the engine and those catalytic formulations that do not significantly increase NO_2.

NO_2 is formed from NO in the engine's exhaust in the presence of the catalyst. This reaction occurs at exhaust gas temperatures at approximately 325°C. This temperature is also the temperature at which the platinum catalyst will allow for passive regeneration. Filter manufacturers have normally wash-coated their filters with large amounts of platinum to make sure that the filters will regenerate. This large concentration of platinum, in combination with longer retention time of the exhaust gas in the filter, results in the formation of NO_2. Manufacturers have been looking at wash-coat formulations containing less platinum loading to lower the NO_2 effects. Catalytic converters are also wash-coated with platinum, however, the loading used on catalytic converters is lower than ceramic filters. Due to faster movement of the exhaust gas through the catalytic converter compared to the ceramic filter, the effect of NO_2 increase is minimized.

MSHA is not aware of overexposures to NO_2 with the use of those catalyzed traps that MSHA has identified. MSHA issued a Program Information Bulletin (PIB 02–04, May 31, 2002) which alerted mine operators that catalyzed traps identified on our Web site could increase NO_2. Mine operators were advised to conduct sampling for NO_2 when these filters were used to ensure miners' are not overexposed or that the filters were causing a general increase of NO_2 in the mine's ambient environment. Mine operators who use catalyzed filters (which have the potential to increase NO_2) should have ventilation systems that are able to remove or dilute the NO_2 to a non-hazardous concentration. However, operators must be aware of localized areas where NO_2 could build up more quickly and create a health hazard for exposed miners.

As discussed in the Greens Creek report, the use of catalyzed filters on those machines used in the study did not indicate any substantial increase in NO_2. MSHA is continuing to work with filter manufacturers to evaluate catalytic formulations on NO_2 generation from the exhaust.

Active regeneration systems discussed below are normally not catalyzed which would then not produce an increase in NO_2. As stated above, NO_2 is generated when exhaust gas temperatures are normally high enough for passive regeneration. If the filter can passively regenerate, then there is a potential for increases in NO_2 emissions.

TABLE VII–2.—SCENARIOS FOR ACTIVE REGENERATION

System name	Regenerating location	Regenerating controller location	Comments
On-board–On-board	On Equipment	On Equipment	Requires source of electric power, normally 440 or 480 VAC.
On-board–Off-board	On Equipment	Designated and fixed-location	Requires equipment to come to a specific regeneration site.

TABLE VII–2.—SCENARIOS FOR ACTIVE REGENERATION—Continued

System name	Regenerating location	Regenerating controller location	Comments
Off-board	Off equipment	Fixed-location	DFPs are exchanged and must be small enough to be handled by one person. Increases number of DPFs needed.
On-board fuel burner	On-equipment	On-equipment during operation	System is complex yet provides advantages of operating during equipment use; manufacture has been discontinued.

Scenarios for active regeneration systems are listed in Table VII–2. The first two systems listed in Table VII–2 may require sufficient machine down time for regeneration, which is usually about one hour between shifts. Also, the equipment should be parked at a designated location during the regeneration period. MSHA recognizes that presently in some mines, production equipment is not brought to a specific location at the end of a shift. At mines where this occurs, mine operators may need to make changes to accommodate such DPF regeneration designs. Alternatively, mine operators may choose to have the equipment operator remove the DPF at the end of each shift and have the next operator replace it with a regenerated unit at the start of the shift. In short, mine operators must plug in the regeneration system at the end of the shift, or DPFs must be transported from the regeneration area to the equipment location. Multiple filters may be installed on a machine in the place of one filter in order to decrease the size and weight of the filters.

Under certain circumstances, some passive DPF systems have exhibited marginal regeneration. This is due to the fact that the duty cycle exhaust temperature is such that some but not all of the DPM is removed during the normal work shift. Slowly the DPM builds up until the DPF must be regenerated manually. In some instances, this needs to be done every 250 hours which would coincide with the regular preventive maintenance cycle for diesel powered equipment.

Achieving a long service life: The key to achieving a long service life from any DPF is to monitor and strictly adhere to exhaust back pressure limits and taking action appropriately. Passive regenerating systems are especially sensitive to equipment duty cycle. A change in duty cycle may reduce exhaust temperatures to a point that regeneration does not spontaneously occur. It is crucial that prompt attention is given to this situation and it is remedied before exhaust backpressures even reach the specified backpressure limit. Continuing to operate with an increasing exhaust backpressure will lead to overloading the DPF with soot. When regeneration is initiated, the large mass of soot may create temperatures hot enough to crack or melt the filter element, thus compromising the filter's efficiency. A similar scenario applies to active systems. Failure to timely regenerate the filter will cause increases in back pressure during a production shift which, if continued, will cause loss of engine power and may invalidate engine warranties.

Thermal runaway may also occur during manual regeneration. Because of the build up of ash, an unburnable component of diesel soot arising from burning lubrication oil, the baseline back pressure of any DPF will rise slowly. Approximately every 1,000 hours, the DPF should be cleaned of the ash following the manufacturer's procedure.

Engine malfunctions and effects on DPF: Normally in mining, engine malfunctions are indicated by excessively smoky exhaust. That indicator will not occur with DPF systems. Malfunctions such as excessive soot emissions, intake air restriction, fouled injector, and over-fueling, may result in an abnormal rise in back pressure in systems that do not spontaneously regenerate. Also, these conditions could lead to abnormal changes in back pressure in passive systems because the malfunction may raise exhaust temperatures causing the excess soot to be burned off. These malfunctions may be detected during the usual 250-hour maintenance and emissions checks conducted upstream of the DPF using carbon monoxide (CO) as an indicator.

The other major filter malfunction is excessive oil consumption that is sometimes associated with blue smoke that could be masked by the performance of the DPF. However, excessive oil consumption leads to a rapid increase in baseline backpressure due to ash accumulation. Excessive oil consumption can be detected if records are kept on oil usage.

Detecting malfunctioning DPF: As noted above, the DPF can be damaged mainly by thermal events such as thermal runaway. Shock, vibration, or improper ''canning'' of the filter element in the DPF can also lead to leaks around the filter element. A Bacharach/Bosch smoke spot test can be used to verify the integrity of a DPF. Smoke spot numbers below ''1'' indicate a good filter; smoke numbers above ''2'' indicate that the DPF may be cracked or leaking. Smoke spot and CO tests during routine 250 hour preventative maintenance is a good diagnostic practice. Note that although a smoke spot number above ''2'' may indicate a cracked or leaking filter, such a result does not necessarily mean the filter has ''failed'' and is not functioning adequately. In MSHA evaluations of DPF performance at the Greens Creek mine, filters that tested with smoke numbers above ''2'' were still shown to be over 90% effective in capturing elemental carbon, based on subsequent NIOSH 5040 analysis of the smoke spot filters.

Some commenters have suggested that diesel particulate filters are not a feasible DPM control option because they are not commercially available for the full range of engine horsepowers used in underground metal and nonmetal mining equipment, especially low horsepower units (less than 50 hp) and high horsepower units (greater than 250 hp). MSHA has found that suitable DPFs for engines of the horsepowers used in underground metal and nonmetal mining equipment are commercially available. The following discussion addresses low horsepower and high horsepower applications, respectively.

Low horsepower engines ranging from around 5 horsepower to around 100 horsepower are frequently used in ancillary and support mining equipment such as personnel transports, utility tractors, ''gators,'' fork lifts, pumps, welders, compressors, and similar equipment, both mobile and stationary. The duty cycle of this type of equipment

is not sufficient to support passively controlled regeneration of a DPF. Thus, either on-board or off-board active filter regeneration is necessary.

In sizing an actively regenerated filter for these small horsepower engines, the only significant selection criterion is the desired time interval between active regenerations. For example, if the user wishes to regenerate a filter no more often than once per day, then the filter must have the capacity to store the maximum amount of soot generated by the subject engine over the period of one day while maintaining acceptable engine backpressure. If physical space to mount a filter is limited, the smallest filter having adequate soot storage capacity at the maximum acceptable backpressure would be selected. If space constraints are not an issue, a larger capacity filter would also be acceptable, with the larger size permitting a longer time interval between regenerations.

As a point of reference, a once-per-day actively regenerated DPF for a 60 hp personnel transport tractor operated for one shift per day is about 20 inches long by about 10 inches in diameter, and such filters are commercially available from multiple sources. If the same filter is fitted to a 30 hp engine having the same duty cycle and emission rate (expressed as g/bhp-hr), that filter will function just as well, but the time interval between regenerations would roughly double. Based on this DPF selection process, there is probably no lower limit to the size engine that can be effectively filtered using any of several commercially available active systems.

DPFs for low horsepower engines can also be provided by the original equipment manufacturer (OEM) or distributor as standard or optional equipment. An example is a Series 7 Toyota forklift equipped with a 40 hp 1DZ–II diesel engine for which a DPF–II diesel particulate filter is offered as an OEM or dealer-installed option. The DPF unit is about 14-inches long and about 8-inches in diameter, and is mounted on the rear of the forklift body.

Regarding high horsepower applications of DPF systems, for purposes of this discussion, ''high'' horsepower is meant to include engines of 250 horsepower and higher because this is the horsepower range addressed by the commenter. Engines of this size would typically be installed on production equipment such as loaders and haulage trucks and are commercially available from several manufacturers.

There are two approaches to filtering diesel particulate emissions that can be implemented on high horsepower engines using current commercially available DPF units: large capacity single unit DPFs; and multiple DPFs that are either manifolded to the same exhaust pipe, or separate DPFs that are provided on each side of a dual exhaust system.

An example of a large capacity single unit DPF system is the Engelhard model 9121A 15-inch long by 15-inch diameter Pt-catalyzed filters installed on the LHD and haulage trucks that were the subject of MSHA's compliance assistance diesel emissions tests at the Greens Creek mine. The LHD and all three haulage trucks were equipped with the same MSHA Approved 12.7 L engines rated at 475 hp at 2100 rpm. The LHD engine was derated to 300 hp, but this value still exceeds the commenter's threshold level of concern of 250 hp, and the truck engines were generating the full 475 hp. These DPFs passively regenerated on both the loader and haulage trucks, and the emission testing demonstrated filter efficiencies of greater than 90%.

The other approach to filtering high horsepower engines is to provide multiple filters. When an engine's exhaust is routed through a single exhaust pipe, the exhaust can be split into two parallel paths, with each path being equipped with a filter. When an engine has a dual exhaust system (*i.e.* separate exhaust pipes on either side of the engine, which is the most common arrangement on high horsepower engines), a DPF can be fitted to each exhaust pipe. This approach actually simplifies a DPF installation on an engine with dual exhausts, as installing a single filter would require modification of the exhaust system to join together the dual exhausts into a single exhaust pipe upstream of the filter. On underground equipment where space is at a premium, it may be easier to install two smaller filters than to find a space large enough to install one large filter.

Depending on the horsepower of an engine, space constraints, method of filter regeneration, and other factors, it may be necessary to split an engine's exhaust into more than two parallel paths for DPF installation. For example, each side of a dual exhaust system could be split into two parallel paths to facilitate the installation of DPFs on all four of the resulting exhaust pipes. There is no upper limit on the horsepower of an engine that could be filtered with standard, commercially available DPFs. For example, MSHA is aware of a stationary diesel-powered generator station rated at about 12,000 hp that has been filtered in this manner.

Although sizing a ceramic (SiC or cordierite) DPF is a rather complicated process that must take into account consideration for engine horsepower, engine DPM emissions (g/bhp-hr), duty cycle, constraints on regeneration, and other factors, the ''rule-of-thumb'' starting point for most filter manufacturers is typically 8 cubic inches of filter media volume per horsepower for an engine having a DPM emission rate of 0.1 g/bhp-hr. Due to manufacturing complications for larger units, the filter media is typically limited to a maximum size of 15-inches long by 15-inches in diameter. These dimensions correspond to a maximum of 330 hp per filter for an engine having an emission rate of 0.1 g/bhp-hr. For cleaner engines like those used in the Greens Creek mine testing, these dimensions correspond to a proportionally larger horsepower engine.

If each side of a dual exhaust system is split only once, requiring four separate DPFs, installation of 15x15 filters on each of the four branches would adequately filter a 0.1 g/bhp-hr emission engine rated at greater than 1,300 hp, which is larger than any engine currently used in underground metal and nonmetal mining, or likely to be used in the foreseeable future.

Importance of preventing exhaust leaks: Because the DPF is greater than 95% effective in removing elemental carbon from the exhaust, it is extremely important that the exhaust system upstream of the DPF be leak-tight. Leaks will leave a shadow of soot and are thus self-evident unless covered by insulation that disperses the leaking exhaust so that no distinct soot shadow is produced. Flex-pipe joints should be fastened securely using wide band clamps. Operators should not use flat flanges with gaskets, but use tapered tongue and groove joints to attain a positive seal.

Alternative Options

In addition to the feasibility of engineering control technology that was discussed at the NIOSH workshops (low emission engines, maintenance, fuels, and DPFs), MSHA believes that enhancing ventilation and enclosing miners in cabs or other filtered areas also are effective engineering controls for significantly reducing DPM exposures.

Administrative controls can effectively reduce miners' exposure to DPM. These include such practices as: reducing diesel engine idling time, reducing lugging of engines, designating certain areas ''off limits'' for operating diesel equipment, and establishing speed limits and one way travel.

MSHA acknowledges that depending upon the circumstances in a particular underground mine, some mine operators may face feasibility challenges implementing current DPM control methods. These operators should contact the MSHA district manager for compliance assistance.

Several commenters expressed the view that ventilation system upgrades, though potentially effective in principle, would be infeasible to implement for many mines. Specific problems that could prevent mines from increasing ventilation system capacity include inherent mine design geometry and configurations (drift size and shape), space limitations, and other external prohibitions, as well as economic considerations.

MSHA acknowledges that ventilation system upgrades may not be the most cost effective DPM control for many mines, and for others, ventilation upgrades may be entirely impractical. However, at many other mines, perhaps the majority of mines affected by this rule, ventilation improvements would be an attractive DPM control option, either implemented by themselves or in combination with other types of controls.

At many high-back room-and-pillar stone mines, MSHA has observed ventilation systems that are characterized by (1) Inadequate main fan capacity (or no main fan at all); (2) ventilation control structures (air walls, stoppings, curtains, regulators, air doors, and brattices, etc.) that are poorly positioned, in poor condition, or altogether absent; (3) free standing booster fans that are too few in number, of too small a capacity, and located inappropriately; and, (4) no auxiliary ventilation for development ends (working faces). At some mines, the ''piston effect'' of trucks traveling along haul roads underground provides the primary driving force to move air.

Often, the result of these deficiencies is a ventilation system that provides insufficient dilution of airborne contaminants, short circuiting, and airflow direction and volume controlled only by natural ventilation. These systems are barely adequate (and sometimes inadequate) for maintaining acceptable air quality with respect to gaseous pollutants (CO, CO_2, NO, NO_2, SO_2, etc.), and are totally inadequate as stand-alone controls for maintaining acceptable DPM levels.

Mines experiencing these problems could benefit greatly from upgrading main, booster, and/or auxiliary fans, along with the construction and maintenance of effective ventilation control structures. During DPM compliance assistance visits to several stone mines, MSHA has observed mine operators beginning to implement limited ventilation system upgrades, such as the addition of booster fans, brattice lines, and auxiliary ventilation in development ends, along with replacing older, high-polluting engines with newer, low-polluting models. MSHA believes that such ventilation upgrades, along with the replacement of as few as one to three engines may be sufficient for many stone mines to achieve compliance with the interim DPM limit.

Deep multi-level metal mines have entirely different geometries and configurations from high-back room-and-pillar stone mines. They typically require highly complex ventilation systems to support mine development and production. These systems are professionally designed, they require large capital investments in shafts, raises, control structures, fans, and duct work, and they are costly to maintain and operate. At these mines, ventilation system costs provide a major economic incentive to operators to optimize system design and performance, and therefore, there are typically few if any feasible upgrades to main ventilation system elements that these mines have not implemented already.

Despite these built-in incentives, however, MSHA has observed aspects of ventilation system operation at those types of mines that can be improved, usually relating to auxiliary ventilation in stopes. Auxiliary fans are sometimes sized inappropriately for a given application, being either too small (not enough air flow) or incorrectly placed (causing recirculation). Auxiliary fans that are poorly positioned draw a mixture of fresh and recirculated air into a stope. Auxiliary fans are sometimes connected to multiple branching ventilation ducts, so that the air volume reaching a particular stope face may be considerable less than the fan is capable of delivering. Perhaps most often, the ventilation duct is in poor repair, was installed improperly, or has been damaged by blasting or passing equipment to the extent that the volume of air reaching the face is only a tiny fraction of that supplied by the fan. MSHA believes that these, and similar problems, exist at many mines, even if the main ventilation system is well designed and efficiently operated.

Optimized auxiliary ventilation system performance alone, as one commenter noted, will not necessarily insure compliance with the DPM interim limit. Auxiliary ventilation systems simply direct air to a stope face so that the DPM generated within the stope can be diluted and carried back to the main ventilation air course. If air is already heavily contaminated with DPM when it is drawn into a stope by the auxiliary system, as could happen at mines employing series or cascading ventilation, the auxiliary system's ability to dilute newly-generated DPM is diminished.

In these situations, the intake to the auxiliary system must be sufficiently free of DPM to achieve the desired amount of dilution, requiring implementation of effective DPM controls upstream of the auxiliary system intake. Such upstream controls might include a variety of approaches, such as DPM filters, low-polluting engines, alternative fuels, and various work practice controls, as well as main ventilation system upgrades at the few mines where they might be feasible. Toward the return end of a series or cascading ventilation system, if the DPM concentration of the auxiliary system intake is still excessive, other engineering control options would include enclosed cabs with filtered breathing air on the equipment that operates within the stope, or remote control operation of the equipment in the stope to remove the operator from the stope altogether. Some commenters stated that feasibility was extensively reviewed in the existing rulemaking. These commenters noted that MSHA already determined that feasibility established for the existing rule must be presumed feasible until proven otherwise. In response to these commenters, MSHA emphasizes that since the agency is engaged in rulemaking that involves changing the surrogate, the DPM limit, as well as the hierarchy of controls, the Agency must review its existing position on feasibility of compliance for the mining industry. MSHA has done so in this preamble. Other commenters stated that mine operators have attempted to purchase and install DPM controls and they are either unavailable or, are neither technically and economically feasible. One issue raised by the commenters was the availability of filters for engines below 50 hp. Filter manufacturers supply filters for all horsepower sizes. MSHA is not aware of any gaps in filter availability. As stated at the recent workshops, most filter vendors stated that they have experience installing DPM filters on all horsepower size engines. However, normally with smaller engines, it would be expected that these systems would have to be regenerated with an active system. Again, MSHA is not aware of any problems with an active system for

smaller engines. In regard to larger horsepower engines, again, at the workshops filter vendors stated that most had experience with larger horsepower engines. They referred to installations that were greater than 500 hp. As stated by the manufacturers, this is normally accomplished with multiple filters to accommodate the larger engines' higher exhaust flow rates. Again, either passive or active regeneration systems have been identified as being available for these large engines.

As discussed elsewhere in this preamble, the work conducted at the Greens Creek mine in Alaska showed that large horsepower engines, 475 hp used at this mine, could be equipped with ceramic filters and these DPFs were regenerated through passive regeneration. A filter rotation issue was identified at the beginning of this study, however, after further discussions with the filter vendor, it was determined that the problem was a manufacturing issue and was being worked out between the mine and the vendor. Even with the observed cracks due to the rotation of the filters, the results of tests showed that the filters continued to significantly reduce DPM from the engine, thus lowering the DPM in the test area.

A commenter also related a filter scenario that failed. This was reported as a cooperative effort between the machine manufacturer, engine manufacturer, and filter manufacturer for selection of a filter system for a 300 hp truck. The commenter stated that with this group working together, the filter system installed failed. MSHA was aware of this situation and understands that the problem was related to regeneration of the filter and not a filtration issue. MSHA believes that even with this cooperation, a vital piece of information concerning the duty cycle and exhaust gas temperatures generated from this truck was not properly communicated to the parties involved. This would lead to a failure where the system would have been set up to regenerate through a passive method, but in actuality, the machine needed an active system or active/passive system. As stated elsewhere, accurate information on the duty cycle/exhaust gas temperature of a vehicle is critical for successful filter installations. The condition of the engine and backpressure monitoring is also essential in choosing and installing a filter system.

As discussed previously in this preamble, MSHA and NIOSH developed the filter guide which makes mine operators and machine manufacturers aware of the issues that must be addressed to successfully engineer a filter to work on a machine. MSHA believes that if mine operators and equipment manufacturers utilize this guide, many of the problems identified with regeneration would be eliminated.

Other commenters stated that the existing limits are not feasible unless MSHA allows mine operators to use administrative controls and personal protective equipment, both of which are prohibited under the existing DPM rule. Consistent with the DPM settlement agreement, MSHA proposes to require its long-standing hierarchy of controls for engineering, administrative, and personal protective equipment. Some commenters stated that if elemental carbon (EC) is used, periodic diagnostic emission tests similar to those required under MSHA's existing standards for underground coal mines at § 75.1914(g) should be required for metal and nonmetal underground mines in order to compare emissions against an engine baseline to determine if elevated organic carbon levels are actually DPM rather than an interferent. These commenters also stated that OC and EC may not increase proportionally in an engine that is in a state of deterioration.

Section 75.1914(g) for underground coal mines requires weekly emission checks on the engine to determine the tune of the engine. The CO concentration must be measured during a repeatable loaded engine test, namely at torque stall. By measuring the CO on a weekly basis, a baseline is established for each engine. Any changes to the baseline of the CO concentration when the repeatable engine test is performed could be an indication that the engine is out of tune. This could be the result, for example, of a clogged intake air filter or a faulty injector. Whereas MSHA agrees that this type of engine testing could be useful as a diagnostic tool to determine the tune of the engine, MSHA noted in its ANPRM as well as in this proposal that the scope of this rulemaking is limited to the terms of the settlement agreement. However, MSHA requests specific comments from the mining community as to whether this test should be required in the final rule. Commenters should include whether or not any aspects of the current provision at § 75.1914(g) should be adopted or revised as part of the final rule.

It is well documented that an engine that is not in tune will emit higher levels of gaseous emissions and DPM emissions. An engine that is not tuned could have an immediate effect on miners' personal DPM exposures. The same commenter stated that the out-of-tune engine could be dismissed in the results of the ambient Method 5040 sampling as an interferent instead of an increase in DPM. The effects of individual engines would be very hard to localize with ambient testing. MSHA agrees that maintenance procedures that could detect any increases in exhaust emissions would aid in limiting miners' DPM exposures. The Agency's current DPM standard at § 57.5066 addresses both maintenance and tagging of equipment for out-of-tune engines. Poor engine performance will most likely result in black smoke that must be the reported to the mine operator and promptly given attention by a mechanic.

The Agency is aware of another diagnostic tool to determine the effectiveness of a ceramic filter. In a diagnostic ''smoke test,'' a sample of DPM is collected as a smoke dot on a filter paper and visually compared against a colorimetric scale. The test would be conducted while the diesel powered equipment is in a torque stall condition, which is a repeatable, high engine load condition for making this comparison. Normally, the raw exhaust before a filter would give a black spot. A sample taken after the filter should be basically white, indicating that the filter was working at its highest efficiency. Any cracks or defects in a ceramic filter would give a darker, grayish to black spot. This would be an indication to the mine operator of the current condition of the filter and of possible filter deterioration.

Smoke dot tests were conducted at the Greens Creek mine as a part of DPM compliance assistance activities at that mine. On one particular filter, the smoke dot produced after the DPM filter appeared to be as dark as the smoke dot before the DPM filter. Visual examination of the DPM filter showed cracks along its outer edges. When quantitative analysis of the dots was conducted using the NIOSH Method 5040 analysis, DPM filter efficiency was determined to be 92%. The efficiency of a different filter without any visual cracks was determined to be 99%. This demonstrates the value of the smoke dot test to detect a filter problem before filter performance has deteriorated significantly. However, even though defects in the DPM filter can affect its efficiency, this may or may not affect a miner's personal exposure to DPM. The smoke test can be done with a commercially available ECOM AC gas analyzer or a Bacharach/Bosch smoke test Apparatus. MSHA believes that this also is a good diagnostic tool for DPM filters. Running this test on a routine basis would give indications with any changes in the filter media. However, changes in the color of the smoke dot may not indicate that miners would be

overexposed to DPM or that the filter should be removed from service. This test may give an indication to the mine operator that a fault is starting in the filter, and subsequently, that the DPM emissions could be increasing.

MSHA asked for comments concerning what technical assistance the Agency should provide to mine operators in retrofitting DPM control devices and evaluating ventilation systems or filtration of cabs. Commenters stated that MSHA should provide guidance in all these areas that involve control technologies. MSHA has been and will continue to provide these types of compliance assistance to underground metal and nonmetal mine operators. Mine operators are encouraged to use the Agency's DPM Single Source Page that includes comprehensive compliance assistance tools addressing the aforementioned issues as well as others.

MSHA has been instrumental in providing compliance assistance to the mining industry. MSHA conducted a number of outreach workshops throughout the country to discuss requirements of the DPM standard and sampling and control technology information. These meetings were held in Lexington, Kentucky; Kansas City, Missouri; Green River, Wyoming; Albuquerque, New Mexico; Elko, Nevada; Coeur d'Alene, Idaho; Knoxville, Tennessee; Des Moines, Iowa; and Ebensburg, Pennsylvania. MSHA also completed baseline sampling at the underground mines covered by the DPM standard, and made site-specific compliance assistance visits.

To further assist mine operators, MSHA and NIOSH have developed compliance assistance tools, many of which are currently available to operators on MSHA's DPM Single Source Page on MSHA's web site. The NIOSH mining web page is available to mine operators as well. Mine operators should give special attention to MSHA/NIOSH's Filter Selection Guide. As explained earlier in this preamble, this document provides mine operators with detailed step-by-step selection factors that can be applied to particular pieces of diesel-powered equipment in their mine. It is an interactive compliance assistance tool that allows mine operators to answer questions on their individual mining operation to select, retrofit and maintain the best available filter technology. This guide will be updated as new technologies are introduced in the underground mining industry.

Also included on MSHA's DPM sole source web page are the Estimator computer program; a list of available filters and manufacturers; the draft DPM compliance guide which contains MSHA's enforcement policy; MSHA sampling procedures; the slide presentation from MSHA's outreach seminars on the requirements of the DPM standard; information on how MSHA calculated the error factor to be used when making compliance determinations; a troubleshooting guide for addressing problems with control technology; along with the NIOSH notes from the filter workshops as discussed above. In addition, MSHA has posted ''Best Practices'' for various issues concerning the use of DPM filters.

MSHA also provided compliance assistance at individual mines through its involvement with bio-diesel projects, fuel catalyst installations, and in-mine evaluations of DPM filter technologies. MSHA's diesel testing laboratory located in Triadelphia, WV has been active in evaluating many of these control technologies. The Agency tested and provided information on the effects, if any, on nitrogen dioxide production for specific catalyzed DPM filters.

The Agency continues to consult with the Metal and Nonmetal Diesel Partnership (the Partnership). The Partnership is composed of NIOSH, industry trade associations, and organized labor. MSHA is not a member of the Partnership due to its ongoing DPM rulemaking activities.

A discussion of additional comments follows.

One commenter responded to MSHA's ANPRM questions regarding retrofitting engines by stating that anything other than the original engine model is unsuitable for a piece of diesel powered equipment. According to this commenter, this would require prohibitive design engineering analysis and implementation. MSHA agrees that on some machines it may not be feasible to change engines. As engine manufacturers develop cleaner engines, however, the older models are being phased out and newer, cleaner engine models are available from the same engine manufacturer. In some cases, the new engine models are direct replacements for an older model. Among the benefits of retrofitting a piece of diesel powered equipment with a cleaner engine are better fuel economy, reduced DPM emissions, improved lubrication systems, and better diagnostic tools, especially with the electronic engines. A cleaner engine that emits less DPM will deposit less DPM on the filter, thus resulting in longer intervals between regenerations, especially in active regeneration systems or combination active/passive regeneration systems.

MSHA asked for comments on whether cabs would be feasible and appropriate for controlling DPM exposures. Commenters responded that operators normally would not purchase a cab to control DPM. Cabs are used for controlling exposures to respirable dust, however, and the results of MSHA's sampling at the Greens Creek mine (MSHA, January 2003) show approximately 85% reduction in DPM when using a filtered cab on a loader. Cabs, however, do not protect workers outside the cab or downwind in series ventilation systems.

Another commenter stated that dimensional constraints of their mine preclude use of cabs on equipment. MSHA is aware that some mines may not be able to use cabs due to dimensional constraints. Environmental cabs can be an effective feasible DPM control device for some mine operators. Many new pieces of diesel powered equipment are sold with enclosed cabs. Besides DPM exposure, an enclosed cab with filtered breathing air would also help reduce exposure to other airborne contaminants and noise.

Commenters provided information on the cost of filters, for both passive and active systems. Information stated that active systems, depending on product specifications, had a higher cost. MSHA agrees with the commenters on cost. However, some of the higher costs of the active system can be spread out over several vehicles. This means that several filters that need active regeneration can be done at the same regeneration station when filters are removed from the machine. The mine can purchase backup filters for each machine and only one regeneration station. If operators chose active, on-board, regeneration, the unit that the machine plugs into can be available for several machines. As stated previously, mine operators may need to administratively adjust machine operating schedules to accommodate active regeneration. MSHA believes that this filter technology is economically feasible for the industry.

One commenter stated that there has been little experience with off board regeneration. MSHA is aware of successful applications in M/NM mines with active regeneration units. MSHA has posted on its homepage best practices for active regeneration stations in M/NM mines. Several problems that have been reported on active regeneration stations are discussed below in association with regeneration stations located at mines greater than 5000 feet in elevation.

The Agency requested data and information from the mining community in its ANPRM on high altitude effects on control devices. Commenters noted that MSHA had conducted the test in an underground coal mine located in a high altitude area and that used diesel powered equipment. MSHA worked with the coal mining industry to determine whether high altitudes affected the performance of ceramic filters in controlling DPM emissions. The Agency found no evidence to conclude that altitude affects filtration performance. Some initial verbal comments were received stating that active regeneration stations could not operate effectively at higher altitudes, but further investigation by the coal mine operators and the filter manufacturers indicated that the problem was due to improper use of the equipment. One situation was that an incorrect setting in the control panel on an active regeneration station was determined to be the problem. In another instance, the mine was not following the schedule for active regeneration and allowed the filter to become overloaded with DPM thus preventing proper regeneration. MSHA has made mine operators aware of these problems.

The Agency believes that at high altitudes, excessive DPM is produced whenever the engine is improperly derated for elevation, such as, the fuel:air ratio is not properly set. Mine operators should check with the engine manufacturer or the engine distributor to verify that the engine is set to the proper fuel setting specification, especially when the engine is operating above 1000 feet in elevation. Increases in DPM emitted could overload the filter and not allow proper regeneration of either a passive or active system. Mine operators should install backpressure monitoring devices when a filter is installed and follow engine manufacturers' recommendations for maximum allowable exhaust backpressure.

Some commenters to the ANPRM stated that diesel particulate filters cannot work in their mines, or DPM filters are not feasible for a number of reasons. MSHA has stated that all commercially available ceramic filters can significantly reduce DPM levels. Regeneration schemes have been identified in this preamble that can be feasibly applied to all types of underground mining machines. Commenters also stated that active regeneration systems are not feasible in their mining operations although no specific scenarios were provided to the Agency to respond to the concern. MSHA believes that the active systems offer a variety of advantages, such as no dependence on exhaust gas temperature or duty cycle, no increases in NO_2, and easier installation due to less restraints for installation of filters close to the exhaust outlet. MSHA understands that active regeneration systems may require mines to make adjustments in their fleet management in order to guarantee that active regeneration works. However, active regeneration systems are commercially available and feasible. MSHA requests that mine operators provide more specific information on the issues associated with the diesel powered equipment that would need active regeneration systems.

Several commenters expressed the view that ventilation system upgrades, though potentially effective in principle, would be infeasible to implement for many mines. Specific problems that could prevent mines from increasing ventilation system capacity include inherent mine design and configurations (drift size and shape), space limitations, and other external prohibitions, as well as economic considerations. MSHA acknowledges that ventilation system upgrades may not be a cost effective DPM control for mines with these limitations. To the contrary, MSHA anticipates the metal and nonmetal underground mining industry will comply with the DPM interim limit primarily through the application of DPF systems rather than ventilation upgrades.

At this time, MSHA estimates that mine operators may not be able to achieve compliance with the proposed DPM limit for every underground miner on every shift, particularly those engaged in inspection, maintenance and repair activities. Existing § 57.5060(d)(2) identifies exceptional conditions where MSHA anticipates that it may not be feasible for many mine operators to use engineering and administrative controls. These conditions, which presently exist in some mines include inspection, maintenance, and repair activities conducted exclusively outside of environmentally controlled cabs or enclosed booths. The existing rule requires mine operators to apply to the Secretary for relief from applying control technology to reduce the concentration limit. MSHA traditionally does not accept use of personal protective equipment for compliance with its other exposure-based standards applicable to metal and nonmetal mines, except while establishing controls or during occasional entry into hazardous atmospheres to perform maintenance or investigations. This proposal would allow the use of personal protective equipment when all feasible and administrative controls have been implemented. MSHA has included in this proposed rule a tiered approach in controlling miners' exposures that operators must use in achieving compliance. MSHA anticipates that very few mine operators will have significant compliance problems with meeting the proposed DMP limit in circumstances other than inspection, maintenance, and repair activities.

The exposure data relied on by MSHA in making its technological feasibility determinations include the final report on the 31-Mine Study, and results of MSHA's DPM baseline compliance assistance sampling conducted at each underground mine covered by the standard. In the 31-Mine Study, the data showed that many miners' exposures are below the proposed DPM limit without application of any additional engineering or administrative controls. The sampling data includes miners' exposures by job category to permit the Agency to pinpoint those occupations in need of additional controls to achieve compliance with the interim PEL.

DPM engineering controls are not new technology. Moreover, the existing DPM standard was promulgated on January 19, 2001 (66 FR 5706) with an effective date of July 19, 2002 for existing § 57.5060(a). As a result of the settlement agreement, MSHA allowed mine operators to take an additional year in which to begin to install appropriate controls to reduce DPM concentrations due to feasibility constraints. Any controls currently used to meet the existing concentration limit may also be used to reduce miners' exposures to DPM required under this rulemaking.

Because of the lack of documented feasibility data for an interim proposed PEL of less than 308 micrograms per cubic meter of air, MSHA has concluded that there is insufficient information available to support the feasibility of lowering the DPM limit at this time. The Agency believes that this level is a reasonable interim limit for which MSHA currently can document feasibility across the affected sector of underground metal and nonmetal mines. MSHA is continuing to gather information on the feasibility of compliance with a final DPM PEL of less than 308 micrograms.

C. Economic Feasibility

MSHA believes the requirements for engineering and administrative controls clearly meet the feasibility requirements of the Mine Act, its legislative history, and related case law. A PEL of 308

micrograms per cubic meter of air is economically feasible for the metal and nonmetal mining industry. Demonstrating economic feasibility does not guarantee the continued viability of individual employers. It would not be inconsistent with the Mine Act to have a company which turned a profit by lagging behind the rest of an industry in providing for the health and safety of its workers to consequently find itself financially unable to comply with a new standard; *Cf, United Steelworkers,* 647 F.2d at 1265. Although it was not Congress' intent to protect workers by putting their employers out of business, the increase in production costs or the decrease in profits would not be sufficient to strike down a standard. *Industrial Union Dep't.,* 499 F.2d at 477. On the contrary, a standard would not be considered economically feasible if an entire industry's competitive structure were threatened. *Id.* at 478; see also, AISI–II, 939 F.2d at 980; *United Steelworkers,* 647 F.2d at 1264–65; AISI–I, 577 F.2d at 835–36. This would be of particular concern in the case of foreign competition, if American companies were unable to compete with imports or substitute products. The cost to government and the public, adequacy of supply, questions of employment, and utilization of energy may all be considered.

MSHA determined that an elemental carbon PEL comparable to the existing concentration limit, along with primacy of engineering and administrative controls as proposed would reduce the cost for compliance required under the existing rule, and industry agrees. Industry commenters stated that operator costs will be reduced since MSHA would be changing the DPM surrogate from TC to EC which would reduce the likelihood of contamination and eliminates the necessity to re-sample. MSHA describes its finding in this preamble under section VIII, ''Summary of Costs and Benefits,'' and in more detail in section X, ''Regulatory Impact Analysis.'' A more comprehensive version is available in the Preliminary Regulatory Economic Analysis on MSHA's web site.

MSHA also believes that the proposed effective date of 30 days for a final rule is feasible for underground mine operators in this sector since the EC surrogate standard is comparable to the existing TC surrogate standard which has been in effect since July 2002. Additionally, as a result of a DPM partial settlement agreement mine operators were given an additional year to begin to develop a written strategy of how they intended to comply with the interim DPM concentration limit. Operators with DPM levels above the concentration limit were to begin to order and install controls to be in compliance by July 20, 2003.

Nevertheless, MSHA recognizes that, in a few cases, individual mine operators, particularly small operators, may have difficulty in achieving full compliance with the interim limit immediately because of a lack of financial resources to purchase and install engineering controls. However, MSHA expects that these mine operators will be able to achieve compliance with the recommended interim limit of 308 micrograms. Whether controls are feasible for individual mine operators is based in part upon legal guidance from the Federal Mine Safety and Health Review Commission (Commission). According to the Commission, a control is feasible when it: (1) Reduces exposure; (2) is economically achievable; and (3) is technologically achievable. *Secretary of Labor* v. *Callanan Industries, Inc.,* 5 FMSHRC 1900 (1983). In determining the technological feasibility of an engineering control, the Commission in Callanan has ruled that a control is deemed achievable if, through reasonable application of existing products, devices, or work methods, with human skills and abilities, a workable engineering control can be applied. The control does not have to be an ''off-the-shelf'' item, but it must have a realistic basis in present technical capabilities. *Ibid.* at 1908.

In determining the economic feasibility of an engineering control, the Commission has ruled that MSHA must assess whether the costs of the control is disproportionate to the expected benefits, and whether the costs are so great that it is irrational to require its use to achieve those results. The Commission has expressly stated that cost-benefit analysis is unnecessary in order to determine whether a noise control is required. *Ibid.*

Consistent with Commission case law, MSHA considers three factors in determining whether engineering controls are feasible at a particular mine: (1) The nature and extent of the overexposure; (2) the demonstrated effectiveness of available technology; and (3) whether the committed resources are wholly out of proportion to the expected results. A violation under the final standard would entail an Agency determination that a miner has been overexposed, that controls are feasible, and that the mine operator failed to install or maintain such controls. According to the Commission, an engineering control may be feasible even though it fails to reduce exposure to permissible levels contained in the standard, as long as there is a significant reduction in a miner's exposure. *Todilto Exploration and Development Corporation* v. *Secretary of Labor,* 5 FMSHRC 1894, 1897 (1983). In *Todilto,* the Commission ruled that engineering controls may also be feasible even though they fail to reduce exposure to permissible levels contained in the standard, as long as there is a significant reduction in exposure.

Current data establishes that DPF systems are extremely efficient in that they reduce elemental carbon emissions from the tailpipe of a piece of diesel powered equipment by as much as 99%. MSHA believes that this is an exceptionally high efficiency rate for a single engineering control in the mining industry. Therefore, MSHA intends to identify the source or sources of DPM emissions leading to a miner's overexposure. A mine operator would be required to install a single control or a combination of controls that is capable of reducing the miners' DPM exposure by 25%.

MSHA evaluated various engineering and administrative controls and their related costs. Mine operators would have the flexibility under the proposed rule to select the type of engineering and administrative controls of their choice in order to reduce a miner's exposure to the DPM limit. MSHA, however, believes that the most cost effective control would be to install DPF systems due to their high rate of efficiency, especially with respect to EC.

If MSHA finds that a miner is overexposed to the DPM standard, and determines that engineering and administrative controls are feasible, and that the operator failed to install or maintain such controls, MSHA would issue a citation to the mine operator for overexposing the miner to DPM. The citation would include an appropriate abatement date for installing feasible controls. In the interim, a respiratory protection program would be required while controls are being installed. As long as miners' DPM exposures are reduced to or below the DPM limit, mine operators have the flexibility under the proposed rule to choose the engineering or administrative controls that best suit the mines' circumstances. MSHA emphasizes that it is available to provide compliance assistance to mine operators to help them select appropriate control methods for reducing miners exposures based upon demonstrated experience.

MSHA asked for comments concerning what type of technical assistance the Agency should provide to mine operators in retrofitting DPM

control devices, evaluating ventilation systems or filtration of cabs. Commenters stated that MSHA should be providing guidance in all areas that involve control technologies. MSHA agrees and will continue to assist mine operators, however, MSHA expects mine operators to make good faith efforts in attempting to achieve compliance, such as beginning to order control technology to reduce DPM exposures.

VIII. Summary of Costs and Benefits

The provisions in this proposed rule will assist mine operators in complying with the existing rule, thereby reducing a significant health risk to underground miners. This risk includes lung cancer and death from cardiovascular, cardiopulmonary, or respiratory causes, as well as sensory irritation and respiratory symptoms. In Chapter III of the Regulatory Economic Analysis in support of the January 19, 2001 final rule (2001 REA), the Agency demonstrated that the rule will reduce a significant health risk to underground miners. This risk included the potential for illnesses and premature death, as well as the attendant costs to the miners' families, to the miners' employers, and to society at large. Benefits of the January 19, 2001 final rule include reductions in lung cancers. MSHA estimated that in the long run, as the mining population turns over, a minimum of 8.5 lung cancer deaths per year will be avoided. MSHA noted that this estimate was a lower bound figure that could significantly underestimate the magnitude of the health benefits. For example the estimate based on the mean value of all the studies examined in the January 19, 2001 rule was 49 lung cancer deaths avoided per year.

The proposed rule results in net cost savings of approximately $15,641 annually, primarily due to reduced recordkeeping requirements. All MSHA cost estimates are presented in 2001 dollars. This represents an average savings of $86 per mine for the 182 underground metal/non-metal mines that would be affected by this proposed rule. Of these 182 mines, 65 have fewer than 20 workers, 113 have 20 to 500 workers; and 4 have more than 500 workers. The cost savings per mine for mines in these three size classes would be $102, $77, and $77, respectively. In the 2001 REA, the Agency estimated that the costs per underground dieselized metal or nonmetal mine to be about $128,000 annually, and the total cost to the mining sector to be about $25.1 million a year, even with the extended phase-in time. Nearly all of those anticipated costs would be investments in equipment to meet the interim and final concentration limits.

IX. Section-by-Section Discussion of the Proposed Rule

A. Section 57.5060(a)

Existing § 57.5060(a) establishes an interim DPM concentration limit of 400 micrograms of TC per cubic meter of air (400_{TC} μg/m³). In the settlement agreement, MSHA agreed to propose to change the surrogate from TC to EC, and to propose to establish an interim limit based on a miner's personal exposure rather than an environmental concentration. Accordingly, the proposed rule would establish an interim permissible exposure limit (PEL) of 308 micrograms of EC per cubic meter of air (308_{TC} μg/m³). This proposed EC-based limit represents the existing TC limit divided by a conversion factor of 1.3, as established in the settlement agreement. MSHA believes that the proposed limit is equivalent to the existing interim concentration limit of 400_{TC} μg/m³.

MSHA's position at this time is that a limit of 308 μg/m³, based on EC, is both technologically and economically feasible for the metal and nonmetal mining indutry to achieve. Although the risk assessment indicates that a lower interim DMP limit would enhance miner protection, it would be infeasible for the underground metal and nonmetal mining industry to reach a lower interim limit.

MSHA is not reducing the protection for miners afforded by the existing interim TC concentration limit. MSHA intends to finalize an interim EC limit that provides at least the same degree of protection to miners as the existing interim limit. MSHA believes that establishing a standard that focuses control efforts on diminishing the DPM level in air breathed by the miner is at least as protective as the interim concentration limit.

The basis for this position is found in the 31-Mine Study, which concluded that the submicron impactor was effective in removing the mineral dust, and therefore its potential interference, from the DPM sample. Remaining carbonate interference is removed by subtracting the 4th organic peak from the analysis. No reasonable method of sampling was found that would eliminate interferences from oil mist or that would effectively measure DPM levels in the presence of environmental tobacco smoke (ETS) with TC as the surrogate.

Using EC as the surrogate would enable MSHA to directly sample miners, such as those who smoke or load ANFO, for whom valid personal sampling would be difficult when TC is the surrogate.

Because EC comprises only a fraction of the TC, a conversion factor must be used to convert the interim concentration limit to an EC exposure limit. To convert the interim TC concentration limit in § 57.5060(a) to an equivalent EC exposure limit, MSHA is proposing to use a factor of 1.3, to be divided into 400_{TC} μg/m³. Thus, the measured value of EC times 1.3 produces a reasonable estimate of TC. This 1.3 factor was specified under the terms of the settlement agreement to convert an EC measurement into an estimate of TC without interferences and is based on the median total carbon to elemental carbon (TC/EC) ratio observed for valid samples in the 31-Mine Study. The 1.3 factor is also consistent with information supplied by NIOSH indicating that the ratio of TC to EC in the 31-Mine Study is 1.25 to 1.67. Most commenters to MSHA's ANPRM supported an interim EC PEL of 400_{TC} μg/m³ ÷ 1.3 = 308_{EC} μg/m³.

Commenters representing the metal and nonmetal mining industry and labor strongly supported a change in the surrogate from TC to EC. These commenters stated that, given the interferences known to be present in underground mining environments, using EC as the surrogate would improve the validity of samples. They also pointed out that this change is consistent with the settlement agreement. Other commenters opposed changing the surrogate. Some of these commenters stated that since DPM has many components, and there is no formula for the exact amount of EC in diesel exhaust, TC is a more accurate measure of DPM than is EC, presumably because it includes more of the DPM.

Some commenters also stated that there is no evidence in the rulemaking record to support this change. According to these commenters, NIOSH must provide a clear statement that EC is an accurate surrogate over the full range of mining conditions and must also provide a formula for converting EC to DPM that meets the NIOSH accuracy criterion. In response, the existing DPM rulemaking record contains NIOSH's position on an appropriate surrogate, and NIOSH recommended that EC rather than TC should be used as the surrogate for DPM. MSHA agrees.

MSHA has found that EC more consistently represents DPM. In comparison to using TC as the DPM surrogate, using EC would impose fewer restrictions or caveats on sampling strategy (locations and durations), would produce a measurement much

less subject to questions, and inherently would be more precise. Furthermore, NIOSH, the scientific literature, and the MSHA laboratory tests indicate that DPM, on average, is approximately 60 to 80% elemental carbon, firmly establishing EC as a valid surrogate for DPM.

Some commenters opposing a change in the surrogate stressed that the mix of EC + OC (to equal TC) is highly variable. Some commenters questioned the use of EC as a surrogate for DPM because the EC:TC ratio varies with each engine and EC is emitted from other sources. Other commenters, noting that a specific mine in the 31-Mine Study had an EC:TC ratio of 85%, stated that there is no perfect way to monitor DPM using surrogates.

MSHA agrees that the EC:TC ratio can vary significantly, not only from mine to mine but also within a mine, depending on equipment configuration and usage. MSHA also agrees that there is no perfect way to precisely quantify DPM. Using EC as a surrogate, however, results in a much more accurate assessment of miners' exposures to DPM than using TC. MSHA seeks information and data on the appropriateness of 1.3 as the factor to convert EC to TC, and an interim EC limit of 308 micrograms.

As part of the settlement agreement, MSHA agreed that the Agency will issue citations for violations of the interim exposure limit only after MSHA and NIOSH are satisfied with the performance characteristics of the SKC sampler and the availability of practical mine worthy filter technology, and MSHA has had the opportunity to train inspectors, conduct baseline sampling and provide compliance assistance at underground metal and nonmetal mines using diesel-powered equipment. MSHA will continue consulting with NIOSH, industry and labor representatives on the performance of the SKC sampler and the availability of practical mine-worthy filter technology.

MSHA trained the Metal and Nonmetal district health specialists and industrial hygienists on diesel particulate sampling in Beckley, West Virginia in September 2002. These individuals returned to their respective districts and trained MSHA compliance specialists on diesel particulate sampling. MSHA has completed the commpliance assistance baseline sampling. As part of its compliance assistance efforts, MSHA personnel were available during the baseline sampling to provide guidance to mine operators on sampling procedures.

Additionally, MSHA trained members of the mining industry on conducting DPM sampling and made that training available to industry personnel at compliance assistance workshops following the Outreach Seminars on Diesel Particulate Rules for Underground Metal and Nonmetal Mines. These seminars and workshops were conducted at nine cities during September and October 2002.

MSHA and NIOSH have reviewed the performance characteristics of the SKC sampler and are satisfied that it accurately measures exposures to DPM. Results of the 31-Mine Study demonstrated that the SKC submicron impactor removed potential interferences from mineral dust from the collected sample. MSHA concluded in its findings in the study, however, that:

> No reasonable method of sampling was found that could eliminate interferences from oil mist or that would effectively measure DPM levels in the presence of ETS with TC as the surrogate.

Furthermore, MSHA has found that use of elemental carbon eliminates potential sample interference from drill oil mist, tobacco smoke, and organic solvents.

Some industry commenters stated that the sampling and analytical processes are too new for regulatory use. According to these commenters, SKC recently changed the impactor, and NIOSH should test the new SKC sampler and evaluate its comparability to the model used in the 31-Mine Study. One of these commenters stated that the shelf life of the prior sampler affected TC measurements by adsorbing OC from the polystyrene assembly onto the filter media and increasing TC measurement. Some commenters also stated that there are significant back-order and manufacturing delays for samplers and that operators who sample alongside MSHA need ample notice to have enough samplers available.

MSHA purchased many of the initial production runs of these samplers to conduct its compliance assistance baseline sampling. Once the initial orders were filled, the sampler became more widely available.

Prior to the 31-Mine Study, MSHA had determined the deposit area of the sample filter to be 9.12 square centimeters with a standard deviation of 3.1 percent. During the initial phases of the 31-Mine Study, it became apparent that the variability of the deposit area was greater than originally determined. The filter area is critical to the concentration calculation. The filter area (square centimeters) is multiplied times the results of the analysis (micrograms per square centimeter) to get the total filter loading (micrograms). While individual filter areas could be measured, it is more practical to have a uniform deposit area for the calculations. As a result, NIOSH and MSHA consulted with SKC to develop an improved filter cassette design. SKC, in cooperation with MSHA and NIOSH, then modified the DPM cassette following the 31-Mine Study.

The modification was limited to replacing the foil filter capsule with a 32-mm ring. This was done to give a more uniform deposit area (8.04 square centimeters) and to accommodate two 38-mm quartz fiber filters in tandem (double filters). These double filters are assembled into a single cassette along with the impactor. The 32-mm ring gives a filter deposit area of 8.04 square centimeters, with negligible variability. The 38-mm filters also eliminate cassette leakage around the filters. These modifications were completed and incorporated into units manufactured after November 1, 2002. Because the design of the inlet cyclone, impaction nozzles, the impaction plate and the flow rate did not change, the modifications to the filter assembly did not alter the collection or separation performance of the impactor. Throughout the compliance baseline sampling, the impactor has been a consistent and reliable sampling cassette.

Tandem filters were used in the oil mist and ANFO interference evaluations. The top filter collects the sample and the bottom filter is a ''dynamic blank.'' The dynamic blank provides a unique field blank for each DPM cassette. The proposed use of elemental carbon as a surrogate would resolve the commenter's concern about shelf life and OC out-gassing on the filter. Shelf life and OC out-gassing are issues relative to organic carbon measurements. These two issues do not apply to an elemental carbon measurement. Once the cassettes have been preheated, during manufacturing, there is no source, other than sampling, to add elemental carbon to the sealed cassette filters.

In the ANPRM, MSHA asked questions on three topics relating to DPM sampling and analysis:

(1) Interferences

In response to the question on interferences when EC is used as the surrogate, some commenters stated that interferences were thoroughly discussed in the final rule preamble and that reasonable practices to avoid them were stipulated in the rule itself. According to these commenters, this problem should not be revisited in this rulemaking.

Other commenters maintained that the 31-Mine Study did not contain the necessary protocols to address all potential interferences. Thus, in their view, MSHA does not have all the data required to answer this question. More specifically, some commenters stated that carbonaceous particulate in host rock has a smaller diameter than the impactor cut point and so may contaminate EC samples. No data were presented to support this claim. These commenters concluded that MSHA should propose additional research and seek comments on the research before concluding that sampling EC with an impactor will eliminate all interference problems. On the other hand, NIOSH, in its response to the ANPRM, stated that the only non-diesel source of EC that is known to be present in a metal/non-metal mine is graphitic mineral ore dust. NIOSH further stated that collection of this dust on the sample filter is prevented by the impaction plate in the SKC DPM cassette.

(2) Field Blanks

A field blank is an unexposed control filter meant to account for background interferences and systematic contamination in the field, spurious effects due to manufacturing and storage of the filter, and systematic analytical errors. The tandem filter arrangement in the sample cassette provides a primary filter for collecting an air sample and a second filter, behind (after) the primary, that provides a separate control filter for each sample. This is especially convenient for industry sampling, since it eliminates the need to send a separate control filter to the analytical lab. MSHA requests comments as to industry experience with this sampling equipment.

In its comments on the ANPRM, NIOSH noted that two types of blanks, media and field, are normally used for quality assurance purposes. A media blank accounts for systematic contamination that may occur during manufacturing or storage. A field blank accounts for possible systematic contamination in the field. NIOSH does not recommend use of field blanks when EC is the surrogate. This is because EC measurements are not subject to sources of contamination in the field that would affect OC and TC results. Quartz-fiber filters are prone to OC vapor contamination in the field and to contamination by less volatile OC (*e.g.,* oils) during handling. However, such contamination is irrelevant when EC is the surrogate.

Several commenters supported the use of field blanks, even if EC is the surrogate. These commenters pointed out that using field blanks is standard IH practice and stated that manufacturing problems with SKC impactor provide further justification. One commenter asked that we use one blank from the same and one from a different manufacturer lot.

MSHA agrees both media and field blanks are desirable, even when elemental carbon is used as the surrogate. The use of such blanks is standard laboratory procedure and adds credibility to sample results. Field blanks adjust for systematic laboratory errors and for systematic contamination of samples from unforeseen or uncontrollable sources. Accordingly, MSHA will adjust the EC result obtained for each sample by the result obtained for the corresponding media blank when a compliance concentration is measured and by the field blank (tandem filter) result when a noncompliance determination is made.

(3) Error Factor

MSHA intends to cite a violation of the DPM_{EC} exposure limit only when there is validated evidence that a violation actually occurred. As with all other measurement-based metal/nonmetal compliance determinations, MSHA would issue a citation only if a measurement demonstrated noncompliance with at least 95-percent confidence. We would achieve this 95-percent confidence level by comparing each EC measurement to the EC exposure limit multiplied by an appropriate ''error factor.''

Most commenters concurred with MSHA's intention to apply such an error factor, though they differed as to how this error factor should be established. Some other commenters, however, recommended citing at a substantially lower confidence level, using the limit of detection of the sampling instrument as replacement for the error factor. These commenters gave two reasons in support of this recommendation: (1) In issuing a citation for noncompliance, the standard of proof should, according to this commenter, be preponderance of evidence rather than beyond a reasonable doubt. The preponderance of evidence indicates a violation whenever a measurement exceeds the exposure limit plus the limit of detection. (2) Conventional public health reasoning and legal precedents call for caution on the side of protecting health, rather than preventing unwarranted citations. In addition, commenters stated that if a measurement failed to demonstrate compliance at a 95-percent confidence level, then this should trigger some action such as additional sampling, *i.e.,* the EC measurement should be divided, rather than multiplied, by MSHA's proposed error factor to provide an ''action level.''

Contrary to these commenters' suggestions, the historical and prevailing practice, in both OSHA and MSHA, traditionally has been to cite noncompliance only when noncompliance is indicated at a high level of confidence. Although, the citation threshold value suggested by these commenters accounts for some analytical imprecision, as quantified by the limit of detection, it fails to account for other sources of measurement uncertainty, such as random variability of airflow through the filter.

Another commenter questioned the use of any constant error factor, because of changes in the EC:OC ratio under varying maintenance and operating conditions. Although MSHA regards such variability as relevant to the issue of choosing an appropriate surrogate, it is not relevant to determining an appropriate error factor if EC is selected as the surrogate. EC is the quantity to be measured under the proposal, and variability in the EC:OC ratio has no known impact on the accuracy of an EC concentration measurement made using the SKC sampler and the NIOSH 5040 analytical method.

Among those commenters supporting MSHA's use of an error factor providing 95-percent confidence in each citation, some advocated continued use of the factor specified in the settlement agreement: 12.2% for an interim EC limit of 308 $\mu g/m^3$. This value was based on the paired punch data obtained from the 31-Mine Study, combined with independent estimates of variability in airflow and the deposit area on the sample filter. Other commenters, noting changes in the design of the SKC sampler since the 31-Mine Study, stated that sampler accuracy should be re-evaluated based on the redesigned sampler and that establishment of the error factor should be made a part of the rulemaking process.

MSHA disagrees that the establishment of an error factor for an airborne contaminant should be part of the rulemaking process. MSHA is not proposing an error factor in this rulemaking, but rather, discussing the procedure used to obtain the error factor. This procedure is further discussed on the MSHA web site—Single Source Page for Metal and Nonmetal Diesel Particulate Matter Regulations. Error factors are based on sampling and analytic errors. The manufacturers of sampling devices thoroughly investigate and quantify the error factors for their devices. While

MSHA does not frequently change an error factor, it retains that latitude should significant changes to either analytical or sampling technology occur.

The formula for the error factor was based on three factors included in the DPM settlement agreement and involved in an eight-hour equivalent full-shift measurement of EC concentration using Method 5040: (1) Variability in air volume (*i.e.,* pump performance relative to the nominal airflow of 1.7 L/min), (2) variability of the deposit area of particles on the filter (cm^2), and (3) accuracy of the laboratory analysis of EC density within the deposit ($\mu g/cm^2$). Modifications made to the sampler since the time of the 31-Mine Study have no bearing on the first and third of these factors. For the error factor specified in the settlement agreement, variability of the filter deposit area was represented by a 3.1 percent coefficient of variation, based on an experiment carried out before the foil filter capsule in the sampling cassette was replaced by a 32-mm ring. Measurements subsequent to introduction of the ring show that variability of the filter deposit area is now less than 3.1 percent (Noll, J. D., *et al.,* ''Sampling Results of the Improved SKC Diesel Particulate Matter Cassette''). This change slightly reduces the error factor stipulated for EC measurements in the settlement agreement, but not by enough to be of any practical significance.

Another commenter, stressing the interdependence of inter- and intra-laboratory analytical variability, stated:

> MSHA should create an error factor model that accounts for the joint and related variability in laboratory analysis, and then combine that variability with pump flow rate, sample collection size, other sampling and analytic variables * * * [t]hen, based upon a statistically strong database, determine the appropriate error factor for elemental carbon samples.

MSHA agrees and this was done for the error factor stipulated in the settlement agreement.

This commenter also suggested that the error factor should include a ''component accounting for location on the filter from which the sample punch was collected.'' The analytical method (NIOSH 5040) relies on a punch taken from inside the deposit area on the sample filter. In effect, the punch is a sample of the dust sample. Presumably, the purpose of the suggested error factor component would be to account for uniformity in the distribution of DPM deposited on the filter, as reflected by different possible locations at which a punch might be extracted. MSHA agrees that uniformity of the DPM deposit should be included in the error factor. The method MSHA used to evaluate the accuracy of the analytical method involved comparing two punches taken from different locations on the same filter. Therefore, variability between punch results due to their location on the filter is already included in the error factor as calculated by MSHA.

The commenter further recommended that MSHA implement sample review and chain of custody procedures, that MSHA retain a portion of each sample for further analysis by the operator, and that the Agency institute inter- and intra-lab analysis of spiked EC samples, along the lines of an AIHA PAT (American Industrial Hygiene Association Proficiency Analytical Testing) program, in order ''to obtain reliable, reproducible information.''

The MSHA Analytical Laboratory is AIHA (ISO 17025) accredited. As such, the Laboratory is required to develop and follow specified measurement assurance procedures. These procedures include calibration, assessing limits of detection, and determining sampling and analytical errors. These are done by standard laboratory methods, which are outside the scope of this rulemaking. MSHA would encourage the laboratories that would perform NIOSH 5040 analysis to develop and institute a PAT-like round-robin program. However, establishing such a program is not only outside the scope of this rulemaking but also outside MSHA's mandate.

MSHA will be extracting and analyzing a second punch from any sample filter that indicates an overexposure (the two punch results will be averaged for purposes of determining noncompliance). As a result, sufficient sample will not be available to send to other laboratories for analysis. The inter-laboratory paired punch comparison, conducted on data from the 31-Mine Study, provided a rigorous evaluation of intra- and inter-laboratory variability in EC analysis. Based on 642 matched pairs of punches analyzed at four laboratories, the coefficient of variation in analytical EC measurement error, reflecting the combination of intra- and inter-laboratory imprecision, was estimated to be 6.5 percent at filter loadings corresponding to an EC concentration at or above the proposed interim limit of 308_{EC} $\mu g/m^3$. This is considered an excellent degree of agreement for an inter-laboratory comparison.

Sample collection procedures and chain of custody, along with other sampling issues, are addressed in the MSHA Metal and Nonmetal Health Inspection Procedures Handbook. Operators are aware that MSHA inspects without prior notice. Therefore, operators who wish to collect side-by-side samples should have filter cassettes and other sampling equipment and supplies available.

Final Concentration Limit

B. Section 57.5060(c)

Existing § 57.5060(c) addresses application and approval requirements for an extension of time for mine operators to reduce the concentration of DPM to the final TC concentration limit of 160 micrograms per cubic meter of air. Mine operators seeking an extension must apply to the Secretary. Only consider technological constraints can be considered as a basis for approving an extension. The current rule allows only one special extension per mine, and this extension is limited to two years. Operators must certify that one copy of the application was posted at the mine site for at least 30 days prior to the date of application. Operators also must give the authorized representative of miners a copy of the plan. The current rule does not apply to the interim concentration limit.

In the settlement agreement, MSHA agreed to propose to adapt this provision to the interim limit, include consideration of economic feasibility, and allow for annual renewals of special extensions. Proposed § 57.5060(c) would apply to both the interim and the final DPM limits. The proposed section would add consideration of economic feasibility in weighing whether operators qualify for an extension. Economic constraints as well as technological constraints may limit a mine operator's ability to come into compliance with either the interim or the final DPM concentration limit. An example of such an economic limitation is the case where the cost of modification to a piece of diesel-powered equipment that would be required to bring the equipment operator's exposure into compliance with the PEL would exceed the value of the equipment. In such an instance, additional time may be required to purchase and implement other effective controls, such as newer equipment with engines that emit less DPM or changes in the ventilation system of the mine.

The proposed section would remove the limit on the number of extensions that may be granted to each mine, but would limit each each extension to one year. The MSHA district manager, rather than the Secretary, could grant extensions. The application for an extension would include information that demonstrates how the economic or technological feasibility issues affect the mine operator's ability to comply with

the standard. The application would also include the most recent DPM monitoring results.

Section 57.5060(c)(vi) would require the mine operator to specify the actions that the operator intends to take during the extension period to minimize miner's exposures to DPM. These actions may include maintaining existing controls, conducting periodic monitoring of miner's exposures, and providing appropriate respiratory protection and requiring miners to use such respirators. MSHA does not intend that personal protective equipment be permitted during the extension as a substitute for engineering and administrative controls that can be implemented immediately. In these circumstances, MSHA would consider such controls to be feasible and would require mine operators to implement them prior to granting an extension.

Finally, the proposed rule would retain the requirement that operators certify to MSHA that one copy of the application was posted at the mine site for at least 30 days prior to the date of application, and another copy was provided to the authorized representative of miners. This record would continue to be subject to records requirements under § 57.5075 of the existing standard.

Existing § 57.5060 requires the mine operator to comply with the terms of any approved application for a special extension, and post a copy of the approved application for a special extension at the mine site for the duration of the special extension period. MSHA's proposed rule also would require operators to provide a copy of the approved application to the authorized representative of miners.

The ANPRM solicited comments on circumstances that would necessitate an extension of time to come into compliance with the PEL and the final concentration limit. Some commenters stated that there were no circumstances that would necessitate an extension of time. Various commenters stated that there should be no extensions. Some commenters also said that the Mine Act does not require a feasibility determination for each mine. Others stated that the technology is available and referenced in the 1998 Verminderung der Emissionen von Realmaschinen en Tunnelbau (VERT) study.

Some commenters favored granting extensions based on operators' good faith efforts to reduce DPM. One commenter said that the 31-Mine Study showed that many mines would be unable to comply with either the interim or final limit. Some commenters said that extensions would be necessary when technological or economic feasibility precludes compliance and that granting extensions should be site-specific.

MSHA also solicited comments on the duration of the extension. Some commenters wanted one-year, renewable extensions. A few commenters stated that extensions should be granted automatically until control technology is feasible, while others felt that extensions should be granted liberally and renewed as long as the mine is making good faith efforts. Several commenters also stated that in-mine applications of control technology can differ from lab results and that manufacturers are developing new technology for EPA compliance, thus research and development for control technology on existing engines is not cost effective.

MSHA asked for comments on what actions mine operators must take to minimize DPM exposures if they are operating under an extension. Some commenters stated that a detailed compliance plan specifying how the limit would be met should be required. These same commenters said that a public hearing on granting an extension should be held at the operator's or union's request. Use of administrative controls and PPE were recommended by several commenters. Commenters also said that research on respiratory protective devices such as PAPRs (powered air purifying respirators) is needed.

MSHA agrees that applications for extension should include the actions a mine operator will take during the extension to reduce the miner's exposure level to the interim PEL or the final concentration limit such as monitoring, ordering controls, adjusting ventilation, respiratory protection, and other good faith actions of the mine operator. The circumstances under which MSHA would propose to require respiratory protection are in new § 57.5060(d).

MSHA is proposing to revise § 57.5060(c) as agreed to in the DPM settlement agreement. MSHA has further reviewed and analyzed the effect of this standard and is concerned that it would duplicate the regulatory objectives addressed under new § 57.5060(d) and the intended hierarchy of controls for the DPM rule. In the preamble to the existing rule at page 5861, MSHA stated:

> Extension application. § 57.5060(c)(1) provides that if an operator of an underground metal or nonmetal mine can demonstrate that there is no combination of controls that can, due to technological constraints, be implemented within five years to reduce the concentration of DPM to the limit, MSHA may approve an application for an extension of time to comply.

The Agency intended for the existing provision to address circumstances where mine operators would need additional time to implement a technological solution to controlling DPM in their individual mines. When MSHA promulgated the DPM rule, it intended for this provision to give flexibility to a regulatory scheme that prohibited use of administrative controls and respiratory protection.

MSHA requests comments on whether the proposed provision for the extension of time to comply with the interim PEL and the final concentration limit would be necessary, and examples of how this requirement would benefit mine operators if included in the final regulatory framework. MSHA is interested in avoiding duplication and requiring additional paperwork from the mining industry in order to resolve feasibility issues at individual mining operations. The Agency needs further input from the public on the effectiveness of proposed § 57.5070(c) and how this provision fits within the comprehensive structure of this rulemaking.

C. Section 57.5060(d)

Existing § 57.5060(d) permits miners engaged in specific activities involving inspection, maintenance, or repair activities, to work in concentrations of DPM that exceed the interim and final limits, with advance approval from the Secretary. MSHA specifies in the standard that advance approval is limited to activities conducted as follows:

> (i) For inspection, maintenance or repair activities to be conducted:
>
> (A) In areas where miners work or travel infrequently or for brief periods of time;
>
> (B) In areas where miners otherwise work exclusively inside of enclosed and environmentally controlled cabs, booths and similar structures with filtered breathing air; or
>
> (C) In shafts, inclines, slopes, adits, tunnels and similar workings that the operator designates as return or exhaust air courses and that miners use for access into the mine or egress from the mine;

Operators must meet the conditions set forth in the standard for protecting miners when they engage in the specified activities in order to qualify for approval of the Secretary to use respiratory protection and work practices. MSHA considers work practices a component of administrative controls.

In tandem with this requirement is existing § 57.5060(e) which prohibits

use of respiratory protection to comply with the concentration limits, except as specified in an approved extension under § 57.5060(c) and as specified in approved conditions related to inspection, repair, or maintenance activities. Section 57.5060(f) prohibits use of administrative controls to comply with the concentration limits.

MSHA agreed under the DPM settlement agreement to propose a revision of the existing § 57.5060(d) and implement the current hierarchy of controls as adopted in the Agency's other exposure-based health standards for metal and nonmetal mines, and consider requiring application to the Secretary before respirators could be used to comply with the DPM standard. The settlement agreement further specifies that employee rotation would not be allowed as an administrative control for compliance with this standard.

When a miner's exposure exceeds the PEL or the concentration limit, proposed § 57.5060(d) would require that operators reduce the miner's exposure by installing, using and maintaining feasible engineering and administrative controls; except operators would then be prohibited from rotating a miner to meet the DPM limits. Under its current policy, MSHA allows mine operators to abate a citation for an overexposure to airborne contaminants (air quality) by using feasible engineering or administrative controls to reduce the miner's exposure to the contaminant's enforcement level (*See* MSHA Program Policy Manual, Volume IV, Parts 56 and 57, Subpart D, Section .5001(a)/.5005, 08/30/1990). When controls do not reduce a miner's exposure to the DPM limits, controls are infeasible, or controls do not produce significant reductions in DPM exposures, operators would have to continue to use all feasible controls and supplement them with a respiratory protection program, the details of which are discussed below in this preamble.

Therefore, MSHA is proposing to remove current § 57.5060(e) prohibiting respiratory protection as a method of compliance in the DPM rule, and § 57.5060(f) which prohibits the use of administrative controls for compliance. Administrative controls, however, were uniquely defined in the existing rule as ''worker rotation.'' MSHA has historically considered other types of controls, besides worker rotation, to be administrative controls.

Administrative controls, such as work practice controls, were permitted. In the context of the existing rule, engineering controls were intended to refer to controls that remove the DPM hazard by applying such methods as substitution, isolation, enclosure, and ventilation.

Work practice controls were referred to as specified changes in the manner work tasks are performed in order to reduce or eliminate a hazard. The Agency strongly believes that these types of administrative controls do not compromise miners' health and safety and would not reduce the level of their protection as provided under the existing final rule. Moreover, mine operators should be given the flexibility to use them to control miners' exposures under a revised DPM rule. Commenters should submit information and supporting data on appropriate administrative controls for a final rule.

At the present time, operators are not required to develop written administrative control procedures, nor a written respiratory protection program when using these control methods to reduce miners' exposures to airborne contaminants in MSHA's air quality standards at 30 CFR 57.5001/57.5005.

In the ANPRM, MSHA asked commenters for information and data on the appropriate role for administrative controls and respirators in underground metal and nonmetal mines in a proposed rule. Most commenters supported removing the prohibition in order to have greater compliance flexibility.

MSHA asked the mining community whether it should require written administrative control procedures when operators are required to use controls to reduce miners' exposures. Commenters were divided on this issue.

MSHA received some objections from the public as to written administrative control strategies. The commenters stated that such a requirement would increase compliance costs and reduce efficiency and personnel availability. Other commenters recommended that MSHA require operators to have written administrative control strategies and post them on the mine's bulletin board. Commenters should submit to MSHA any information on the benefits and cost implications of including in a final rule a requirement to develop written administrative control procedures and post the procedures on the mine's bulletin board.

The proposed changes to § 57.5060(d) described above might appear to alter the way mine operators will be required to control DPM exposures compared to the requirements contained in the existing rule. However, in most cases, the proposed changes and the existing rule impose similar requirements. The mining community will find that these proposed changes are largely intended to simplify understanding of the rule's requirements for controlling DPM exposures and to reduce unnecessary paperwork.

MSHA would consider an engineering or administrative control to be effective in reducing DPM exposure if credible scientific or engineering studies or analysis using similar diesel equipment operated under similar conditions have demonstrated the capability, either by itself or in combination with other controls, to achieve significant DPM exposure reductions, in either laboratory or field trials. MSHA believes that a 25% or greater reduction in DPM exposure should be considered significant. MSHA, however, requests further comments on what would constitute a significant reduction in a miner's DPM exposure.

MSHA considers an engineering control to be technologically achievable if through reasonable application of existing products, devices, or work methods, with human skills and abilities, a workable engineering control can be applied. The control does not have to be ''off the shelf,'' but it must have a realistic basis in present technical capabilities.

As discussed elsewhere in this preamble (Feasibility), MSHA would consider, for example, a ceramic DPM filter to be a technologically feasible control for a piece of diesel equipment if there was evidence that the filter had been successfully applied to a similar engine subjected to similar operating conditions. The fact that a ceramic DPM filter had not been previously applied to that particular make and model of engine, or to that particular make and model of mining equipment would not, by itself, constitute a basis for determining that the application would be technologically infeasible.

Also, the fact that the duty cycle of a particular piece of mining equipment might not be sufficient for passive controlled regeneration of a ceramic DPM filter would not, by itself, constitute a basis for determining that the application of that filter to that piece of mining equipment is technologically infeasible.

In this example, unless additional substantive information establishing the technological infeasibility of the application is presented, MSHA would consider the filter to be a technologically feasible engineering control. Furthermore, MSHA would consider the filter to be technologically feasible even though a certain amount of applications engineering might be required to produce a workable or optimal system, including the need to re-locate, re-route or otherwise modify exhaust system components to facilitate

filter installation, and the possible need for either on-board or off-board active or active/passive filter regeneration.

MSHA would also consider certain traditional methods for control of exposure to airborne contaminants to be technologically feasible for controlling exposures to DPM, such as improved ventilation (main and/or auxiliary) and enclosed cabs with filtered breathing air. Improving ventilation may involve upgrading main fans, use of booster fans, and use of auxiliary fans that may or may not be connected to flexible or rigid ventilation duct, as well as installation of ventilation control structures such as air walls, stoppings, brattices, doors, and regulators. At most mines, cabs with filtered breathing air are technologically feasible for many newer model trucks, loaders, scalers, drills, and other similar equipment. However, use of enclosed cabs with filtered breathing air may not be feasible as a retrofit to certain older equipment or where the function performed by miners using a particular piece of equipment is inconsistent with any type of cab (*e.g.,* loading blastholes from a powder truck, installing utilities from a scissors-lift truck) or where the height of the mine roof is not sufficient for cab clearance. Other examples of engineering controls that MSHA would consider to be technologically feasible include certain alternative fuels, fuel blends, fuel additives, and fuel pre-treatment devices, and replacement of older, high-emission engines with modern, low-emission engines.

In determining economic feasibility, MSHA would consider whether the costs of implementing the control are disproportionate to the expected DPM concentration or exposure reduction, and whether the costs are so great that it would be unreasonable to require its use to achieve those results. MSHA would, for example, expect ceramic DPM filters ranging in cost from $5,000 for smaller engines to $20,000 for larger engines to be economically feasible, particularly given the significant reduction these filters can achieve.

In the ANPRM, MSHA asked for comments on the appropriate role for respirators. Most commenters indicated that respirators with some restriction on their use should be permitted as a means of compliance with the DPM limits. Some commenters disagree on the types of restrictions that MSHA should place on their use, while other commenters believe that PPE may be far more effective in protecting miners from suspected DPM health effects than any available and feasible engineering control technology. According to still other commenters, respirators are uncomfortable and difficult to properly use over an extended period of time. They restrict visibility and create breathing resistance, thereby causing an additional hazard to miners. Finally, MSHA was notified that if the final rule allows respirators at all, such respirators should only be used with approval of the Secretary, and only as a supplemental control for other feasible controls.

Generally, commenters agreed with proposing MSHA's current hierarchy of controls for reducing miners' exposures to DPM. Some commenters to the ANPRM stated that MSHA properly prohibited the use of PPE in the current rule and no change should be made to this provision. Others stated that MSHA should state and enforce its preference for engineering controls rather than personal protective equipment, and that standard industrial hygiene practice supports this position. In response to these commenters, MSHA agrees that engineering controls should be included in the first tier of the agency's methods of compliance. The proposed rule reflects this position but does not place preference for engineering controls over use of administrative controls for reducing miners' exposure to DPM. Mine operators would be required to use all feasible engineering and administrative controls as a first response to miners' overexposures. MSHA intends for mine operators to have the flexibility to choose to start with engineering or administrative controls, or a combination of both, as the control method that best suits their circumstances.

Engineering controls are very effective in altering the sources of miners' DPM exposures in the underground mining environment, thereby decreasing DPM exposures. Unlike respiratory protection, engineering controls do not depend upon individual performance or direct human involvement to function. Based on its observations and experience in underground metal and nonmetal mines, MSHA continues to believe that feasible engineering and administrative controls exist to adequately address most DPM overexposures to the interim limit. However, MSHA is not persuaded that all DPM overexposures can be eliminated through implementation of feasible engineering and administrative controls alone, and that extra protective measures should be taken to protect miners in such circumstances.

Some commenters suggested that various commercially available respirators, including those with filtering facepieces, were suitable for protection against particles smaller than DPM, and would therefore be suitable for DPM as well. NIOSH recommended that respirators used for protection against DPM have an R–100 or P–100 certification per 42 CFR part 84. NIOSH recommended against using N-rated respirators since diesel exhaust contains oil, and aerosols containing oil can degrade the performance of N-rated filters. MSHA agrees.

Proposed § 57.5060(d)(1) would require that respirators be NIOSH certified as a high-efficiency particulate air (HEPA) filter, certified per 42 CFR part 84 (approval of Respiratory Protection Devices) as 99.97% efficient, or certified by NIOSH for diesel particulate matter. Proposed § 57.5060(d)(2) would require that non-powered, negative-pressure, air purifying, particulate-filter respirators shall use an R- or P-series filter or any filter certified by NIOSH for diesel particulate matter. The proposal further specifies that R- series filters shall not be used for longer than one work shift.

NIOSH also recommended that combination filters capable of removing both particulates and organic vapor be specified, since organic vapors and gases can be adsorbed onto DPM. The proposal does not require respirators to be certified for organic vapor because MSHA does not have data substantiating that a DPM overexposure would necessarily indicate an associated overexposure to organic vapors. If simultaneous sampling for DPM and organic vapors indicate overexposure to both contaminants, any subsequent citation(s) relating to the overexposures would require that respirators be used and equipped with a filter or combination of filters rated for both DPM and organic vapors.

MSHA also asked for information as to whether mine operators should be required to implement a written respiratory protection program when miners must wear respiratory protection. Commenters were divided on this issue. Some commenters stated that MSHA should require that the respiratory protection program be in writing. NIOSH recommended in its comments that ''mine operators be required to have a written respiratory protection program, analogous to that required by OSHA for general industry in 29 CFR 1910.134 Respiratory protection, that is work-site specific and includes administration by a trained program administrator, respirator selection criteria, worker training, a program to determine that the workers are medically able to use respiratory protective equipment, and provisions for regular evaluation of the program's effectiveness.''

Other commenters opposed a written program. MSHA requests the mining community to submit further information for justifying a written respiratory protection program, including cost data and benefits to miners' health.

The proposed standard is based on the 1969 ANSI documentation that has been updated several times since the air quality standards were promulgated in 1973 (30 CFR 56/57.5005). The ANSI, nevertheless, recommended in its 1969 version, as well as in subsequent versions, that a standard respiratory protection program should include written procedures that address implementation information such as respirator selection, fit testing procedures, cleaning and sanitizing procedures, all of which are critical to an appropriate program. MSHA invites further comments on whether the final DPM rule should include provisions for a written respiratory protection program. Comments should address health benefits for miners, projected paperwork burden and compliance costs to the metal and nonmetal underground mining industry, and should include supporting data.

MSHA also received comments on the need for including a requirement for operators to have a miner medically examined before that miner could be required to work in an area where respiratory protection would be required. In addition, some commenters asked the agency to protect miners' jobs by implementing the requirements of § 101(a)(7) of the Mine Act. Section 101(a)(7) of the Mine Act establishes the statutory authority for MSHA to promulgate medical surveillance and transfer of miner requirements in order to prevent the miner from being exposed to health hazards. This provision of the Mine Act states, in pertinent part:

> Where appropriate, such mandatory standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring miner exposure at such locations and intervals, and in such manner so as to assure the maximum protection of miners. In addition, where appropriate, any such mandatory standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the operator at his cost, to miners exposed to such hazards in order to most effectively determine whether the health of such miners is adversely affected by such exposure. Where appropriate, the mandatory standard shall provide that where a determination is made that a miner may suffer material impairment of health or functional capacity by reason of exposure to the hazard covered by such mandatory standard, that miner shall be removed from such exposure and reassigned. Any miner transferred as a result of such exposure shall continue to receive compensation for such work at no less than the regular rate of pay for miners in the classification such miner held immediately prior to his transfer. In the event of the transfer of a miner pursuant to the preceding sentence, increases in wages of the transferred miner shall be based upon the new work classification.

Currently, MSHA standards do not require medical transfer of metal and nonmetal miners. Existing standards at 30 CFR 56/57.5005(b) for control of miners' exposure to airborne contaminants require that mine operators establish a respiratory protection program consistent with the ANSI Z88.2–1969 ''American National Standard for Respiratory Protection'' which includes medical determinations for potential respirator wearers. MSHA standards at 30 CFR part 90 address medical removal for coal miners and provide miners with a medical examination and an opportunity to transfer to an area of the mine having lower dust levels, at the same level of pay, when the miner has x-ray evidence of the development of pneumoconiosis.

OSHA acknowledges within its current standards addressing respiratory protection at 29 CFR 1910.134(e) that use of a respirator may place a physiological burden on workers while using them. At a minimum, OSHA requires employers to provide medical evaluations before an employee is fit tested or required to use respiratory protection. Employers are required to have a physician or other licensed health care professional have the worker complete a questionnaire, or in the alternative, conduct an initial medical examination in order to make the determination. If the worker has a positive response to certain specified questions, the employer must provide a follow-up medical examination. The questionnaire is contained in the body of the OSHA rule. The preamble to the OSHA final rule states:

> Specific medical conditions can compromise an employee's ability to tolerate the physiological burdens imposed by respirator use, thereby placing the employee at increased risk of illness, injury, and even death (Exs. 64–363, 64–427). These medical conditions include cardiovascular and respiratory diseases (*e.g.*, a history of high blood pressure, angina, heart attack, cardiac arrhythmias, stroke, asthma, chronic bronchitis, emphysema), reduced pulmonary function caused by other factors (*e.g.*, smoking or prior exposure to respiratory hazards), neurological or musculoskeletal disorders (*e.g.*, ringing in the ears, epilepsy, lower back pain), and impaired sensory function (*e.g.*, a perforated ear drum, reduced olfactory function). Psychological conditions, such as claustrophobia, can also impair the effective use of respirators by employees and may also cause, independent of physiological burdens, significant elevations in heart rate, blood pressure, and respiratory rate that can jeopardize the health of employees who are at high risk for cardiopulmonary disease (Ex. 22–14). One commenter (Ex. 54–429) emphasized the importance of evaluating claustrophobia and severe anxiety, noting that these conditions are often detected during respirator training. [*See* 63 FR 1152, 01/08/1998]

MSHA seeks information from the public as to whether the final rule should include requirements for medical examination and transfer of miners under the proposed DPM respiratory protection standard. Commenters should also submit cost implications of such a program and other related data.

The Agency also considered whether mine operators should be required to apply in writing to the Secretary for approval to use respiratory protection. Some commenters recommended requiring approval by the Secretary before respiratory protection should be permitted as a means of compliance with the applicable DPM limit, but MSHA was not persuaded that such a step would be necessary and MSHA's proposed § 57.5060(d) does not include this recommendation. Respiratory protection functions as a supplemental control. Operators must have ready access to respirators when they must be used as is the case where the agency has allowed metal and nonmetal mine operators to do so for many years under MSHA's air quality standards. Moreover, the proposed control plan requirements in § 57.5062 and the application for extension in § 57.5060(c) would effectively require that mine operators specify when they plan to use respirators to control a miner's DPM exposure. MSHA, therefore, would know when mine operators intend to use respirators as an interim measure until compliance can be achieved through the application of engineering and administrative controls. Further, when a mine operator is issued a citation under proposed § 57.5060(d) for a miner's exposure exceeding the applicable DPM limit, and the mine operator intends to use respiratory protection as an interim control measure, MSHA would make certain that a respiratory protection program is established and appropriate respirators are used in accordance with § 57.5005(a), (b) and proposed paragraphs § 57.5060(d)(1) and (d)(2) concerning filter selection for air-purifying respirators. Accordingly, this requirement can be deleted from the

existing rule without reducing protection to the miners.

D. Section 57.5060(e)

Existing § 57.5060(e) prohibits mine operators from using personal protective equipment (respirators) to comply with the DPM concentration limit except under specific circumstances and only with the advance approval of the Secretary based on an application submitted by the mine operator. The effect of this provision would be to require mine operators, in most situations, to control DPM concentrations by implementing engineering and work practice controls, with limited respirator usage as provided under § 57.5060(d).

MSHA emphasizes that the hierarchy of controls presupposes that certain types of industrial hygiene controls are inherently superior to other types of controls in reducing or eliminating hazardous exposures. Preference is given to controls that remove or eliminate the hazard from the work place. Engineering controls and changes in work practices that remove or eliminate the hazard are therefore the preferred methods for controlling hazardous exposures, and in accordance with the principle of hierarchy of controls, must be implemented first before resorting to the use of personal protective equipment as a means of compliance. Personal protective equipment is considered an acceptable control option only after all feasible engineering and administrative controls have been fully implemented. Under the hierarchy of controls concept, if engineering and administrative controls alone are not capable of reducing exposures to the applicable limit, these controls would need to be used and maintained, but in addition, the mine operator would be required to provide appropriate personal protective equipment to affected miners and would have to ensure the equipment is properly used.

Engineering controls, in both the existing rule and the proposal, are meant to refer to controls that reduce or remove the DPM hazard from the workplace by applying such methods as substitution, isolation, interception, enclosure, and ventilation. In the existing rule, administrative controls were uniquely defined as ''worker rotation'' and prohibited as an acceptable DPM control method because it fails to eliminate the exposure hazard and results in placing more miners at risk. In the proposal, this unique definition is removed and administrative controls are meant to refer to the historically recognized controls such as specified changes in the way work tasks are performed that reduce or eliminate the hazard. Worker rotation is then specifically prohibited as an administrative control in proposed § 57.5060(e).

Since existing § 57.5060(e) provided certain exceptions to the prohibition on the use of personal protective equipment, MSHA does not believe that its proposed revisions will result in significantly greater respirator usage or decrease the level of protection afforded to miners. The Agency's proposal, therefore, serves primarily to simplify the understanding of the rule's requirements for controlling DPM exposures, to achieve consistency with MSHA's other exposure-based rules for metal and nonmetal mines, and to reduce unnecessary paperwork.

E. Section 57.5061(a)

Under existing § 57.5061(a), the Secretary would have determined compliance with ''an applicable limit on the concentration of diesel particulate matter pursuant to § 57.5060.'' In accordance with the DPM settlement agreement, the Agency proposes that § 57.5061(a) be changed to specify that MSHA would determine compliance with ''the PEL''. MSHA is proposing to replace the term Aconcentration limit'' in this section with the term ''PEL'' to reflect that MSHA proposes to enforce a personal exposure limit to limit miners' exposure to DPM. These are conforming changes and do not result in a decrease of protection to the miners.

F. Section 57.5061(b)

Compliance determinations under existing § 57.5061(b) are based on total carbon measurements. MSHA is proposing that compliance determinations made under § 57.5061(b) would be based on elemental carbon measurements instead of total carbon in accordance with the proposed change in the interim limit in § 57.5060. Copies of the NIOSH 5040 Analytical Method can be obtained at *www.cdc.gov/niosh,* or by contacting MSHA's Pittsburgh Safety and the Health Technology Center, P.O. Box 18233, Cochrans Mill Road, Pittsburgh, PA 15236.

G. Section 57.5061(c)

Under existing § 57.5061(c), the Secretary would have determined the appropriate sampling strategy for conducting compliance sampling utilizing personal sampling, occupational sampling, or area sampling, based on the circumstances of a particular exposure. The Agency proposes that § 57.5061(c) be changed to specify that only personal sampling would be utilized for compliance determination.

The Agency believes that personal sampling alone will result in an accurate determination of miner exposure to DPM. Proposed § 57.5060(a) establishes a DPM limit that specifically relates to the exposure of miners to DPM. Since the proposed limit relates to the exposure of miners, the appropriate sampling method to determine compliance is personal sampling. In this respect, the proposed rule's sampling method for compliance determination is consistent with the Agency's longstanding practice of utilizing personal sampling to determine compliance with exposure limits for airborne contaminants in the metal and nonmetal sector.

Under proposed § 57.5061(b), MSHA would utilize elemental carbon as the surrogate for DPM sampling. This is a conforming change in the paragraph. Personal sampling allows for the accurate determination of DPM exposure when elemental carbon is utilized as the DPM surrogate.

The Agency anticipates several benefits of standardizing personal sampling as the compliance sampling method. MSHA expects that mine operators and miners are already familiar with personal sampling, since MSHA utilizes it routinely when compliance sampling for noise, dust, and other airborne contaminants. Utilizing personal sampling eliminates possible disputes that could have arisen over whether an area sample was obtained ''where miners normally work or travel.'' Mine operators who choose to conduct environmental monitoring for DPM under § 57.5071 using MSHA's compliance sampling method will not need to anticipate which sampling method MSHA would most likely have selected, personal, area, or occupational, based on the circumstances of a particular exposure. Personal sampling avoids situations where area sampling is intended to capture the exposure of a particular miner for most or all of the work shift, but that miner moves to a new location during the shift. Personal sampling for elemental carbon avoids the problem of determining compliance for an equipment operator who is a smoker and who works inside an enclosed cab. Under the existing rule, this miner could not be sampled inside the cab due to interference from tobacco smoke, and area sampling outside the cab would not capture that miner's DPM exposure.

MSHA received numerous comments in response to the ANPRM concerning the proposed elimination of area and occupational sampling. Most supported

the change for the reasons expressed above. One commenter observed:

> We agree that personal sampling more accurately measures personal exposure. However, area sampling can also be useful for checking the reliability of personal sampling, and the degree to which that sampling is representative. Area sampling can also provide important information about the quality of compliance plans. MSHA should retain the ability to collect area samples for such purposes, and to require that operators collect them, even if area samples cannot, in themselves, trigger a citation.

The Agency agrees that personal sampling is more representative of personal exposure, which is why the change to personal sampling for compliance determinations is being proposed. The Agency also agrees that area sampling can be a useful tool for quantifying DPM concentrations at specific locations in a mine, which can greatly facilitate evaluation of DPM controls. MSHA has conducted extensive area sampling for DPM to assist Agency personnel, mine operators, and miners to better understand DPM baseline conditions in mines, and to evaluate the effectiveness of various DPM controls. MSHA intends to continue to conduct area sampling for DPM as necessary, but on a compliance assistance basis only, and not for compliance determinations or enforcement.

A few commenters were opposed to the elimination of area and occupational sampling for compliance determination. Two commenters suggested that relying on personal sampling alone would enable a mine operator to influence the sampling result to the mine operator's advantage by re-assigning a miner being sampled to an area with lower DPM levels. MSHA believes that although a mine operator may attempt to defeat compliance sampling by re-assigning the miner being sampled, MSHA's existing enforcement authority is adequate to ensure a valid and representative sample can nonetheless be obtained.

If the miner being sampled for DPM is re-assigned to a different workplace with lower DPM levels, or the miner's DPM exposure is deliberately manipulated by some other means, such as by withdrawing a ''dirty'' piece of equipment from the area where the miner is working, the inspector has the authority to investigate the circumstances, and invalidate the sample if the inspector determines that the miner's workday was not ''normal.'' In egregious cases, where there is clear indication of intent and proof, the inspector may cite the mine operator under 103(a) of the Mine Act for impeding an inspection. In either case, sampling may be conducted subsequently to obtain a valid and representative sample of that miner's DPM exposure.

One commenter suggested that personal sampling is not appropriate for miners who work inside enclosed cabs, because although they may be protected against DPM, other downstream miners who do not work inside enclosed cabs would not be protected. MSHA believes that the compliance status of any miner can be determined by personal sampling, whether they work in an enclosed cab or not. Personal sampling of the miner in an enclosed cab can determine whether the cab air filtration system or other DPM controls are adequate to maintain compliance for that miner. Downstream miners who do not work in enclosed cabs and who are suspected of high DPM exposures can also be sampled, and in accordance with MSHA's health sampling policy that targets miners with the highest exposures for sampling, the inspector would likely do so.

Several comments were also received that responded specifically to the questions asked in the ANPRM relating to existing § 57.5061(c) and proposed changes.

(a) What would be the cost implications for mine operators to conduct personal sampling of miners' DPM exposures if EC is the surrogate?

One commenter indicated that costs are secondary to whether the policy of conducting personal sampling for compliance determination is reasonable. Other comments suggested no change in expected costs because the NIOSH Method 5040 is in place at several commercial labs. Several commenters noted that costs may be lower if EC is the surrogate due to ''fewer false readings and contaminated samples.'' On the whole, MSHA believes valid and representative samples can be obtained through personal sampling, and MSHA does not expect differences in sampling cost, if any, to be significant.

(b) What experience do mine operators have with DPM sampling and analysis?

The commenters indicated that mine operators' experience with DPM sampling and analysis varies widely across the underground metal and nonmetal mining industry. Some mine operators, especially those that have been parties to the DPM litigation and/or involved in the 31-Mine Study, have acquired considerable experience, while many other operators have had little or no experience. Several commenters mentioned that mining company health and safety staff capable of conducting DPM sampling ''are overburdened with other MSHA initiatives (HazCom, noise, silica) and will not be able to complete the required DPM tasks.'' These commenters recommended that AMSHA should provide in-mine training, sampling assistance [and] outreach meetings'' and that MSHA health staff should help mine operators that lack DPM sampling experience ''without enforcement, by providing comprehensive in-mine training and sampling assistance.''

MSHA largely agrees that many mine operators are unfamiliar with MSHA's DPM sampling and analytical methods. Accordingly, MSHA intends to provide numerous opportunities for mine operators and miners to obtain training on DPM sampling. MSHA will target these compliance assistance training opportunities to small mine operators in particular. MSHA conducted a 3-day, in-mine, hands-on DPM sampling workshop at an underground limestone mine near Louisville, KY in December 2002, and other similar workshops are planned.

MSHA has also posted information on its Web site relating to the specialized DPM sampling cassette with integral submicron impactor. Also posted on the MSHA web site are a Compliance Guide on the standard itself, which includes considerable information about sampling, the draft chapter from MSHA's Metal and Nonmetal Health Inspection Procedures Handbook detailing the compliance sampling procedures that MSHA inspectors will follow, and the field notes form that MSHA inspectors will use to document DPM compliance sampling. All of this information is also available in hardcopy form for mine operators and miners who do not have internet access. MSHA intends to develop and provide additional DPM sampling-related compliance assistance materials as needed to mine operators and miners in both hard-copy form and on its Web site.

As a result of some of the changes in the rule language that have been proposed through this rulemaking, MSHA's DPM compliance sampling procedures will conform more closely to existing MSHA sampling practices for dust and other airborne contaminants. As a consequence, mine operators that have had no previous experience with DPM sampling, but have had experience with, or at least knowledge of, MSHA respirable dust sampling, will discover they have very little more to learn. Except for the sample filter cassette itself, the mechanics of DPM sampling will be almost identical to respirable

dust sampling. For example, the same pump and sampling train are used (sample pump, hose, cyclone holder, Dorr-Oliver 10 mm nylon cyclone), and the pumps must be pre- and post-calibrated at the same 1.7 liters per minute flow rate. Sampling for both respirable dust and DPM is for the full shift, and the same chain-of-custody procedures must be followed for handling the cassettes. For both respirable dust and DPM, the miners with the highest expected exposure will be targeted for sampling, and much of the same information will need to be documented in the sampler's field notes (mine, date, person conducting sampling, person being sampled, sources of exposure, controls used, etc.).

As with respirable dust sampling, compliance sampling, for DPM would be personal rather than a combination of personal, area, and occupational. Also, since the surrogate for DPM would be EC instead of TC, the sampling complications associated with avoiding OC interferents are eliminated (*e.g.* sampling too close to smokers, sampling too close to sources of drill oil mist, etc.).

Mine operators should already be familiar with MSHA's sampling procedures for respirable dust. Because respirable dust sampling and DPM sampling will be so similar, and because numerous DPM sampling training opportunities will be made available across the industry, MSHA expects few if any mines will be unable to conduct their own DPM sampling or to comply with the DPM sampling requirements of this standard. Regarding the issue of mine operator DPM sampling being an added burden on mine safety and health staff, MSHA acknowledges that it is almost unavoidable that some staff time will need to be allocated to DPM sampling. However, MSHA does not believe that this added burden will be significant for most mines. A specific DPM monitoring schedule is not included in the standard. Mine operators are required to monitor as often as necessary to verify continuing compliance. Once compliance has been verified, MSHA would not anticipate that extensive additional monitoring would be required. However, if conditions affecting DPM emissions or in-mine DPM concentrations change significantly, such as by the addition of new equipment or changes in the ventilation system, the mine operator would be expected to verify that these changes have not resulted in DPM overexposures.

(c) Is there experience with DPM sampling in other industries and other countries?

One commenter suggested that many coal mine operators know enough about sampling to influence the outcome, and that MSHA should therefore use a combination of personal, area and occupational sampling to properly evaluate the levels of DPM in the ambient atmosphere. However, as noted above, MSHA believes it has sufficient enforcement authority to appropriately deal with any incidents of deliberate sample tampering, should they arise.

Other commenters were aware that a group in Canada (DEEP) has been researching technology to reduce DPM in occupational settings and mentioned the EPA studies on diesel exposure. They did not feel the EPA sampling was applicable to occupational exposure assessments. Some of them felt that MSHA should stay its DPM enforcement until the DEEP study and NIOSH research yielded more data.

MSHA is also aware of these studies and considered them during this rulemaking. The Agency believes that there is sufficient information available to support feasibility of the proposed $308_{EC}\mu g/m^3$ interim limit, as discussed previously in this preamble under Technological and Economic Feasibility. As a result of the settlement agreement, MSHA allowed mine operators to take an additional year after the effective date of the existing interim DPM concentration limit during which mine operators could begin to install appropriate controls to reduce DPM concentrations.

H. Section 57.5062 Diesel Particulate Matter Control Plan

Existing § 57.5062 requires mine operators to establish a DPM control plan, or modify the plan, upon receiving a citation for an overexposure to the concentration limit in § 57.5060. A single citation triggers the plan. A violation of the plan is citable without consideration of the current DPM concentration level. The operator must demonstrate that the new or modified plan will be effective in controlling the DPM concentration to the limit. The existing rule also sets forth a number of other specific details about the plan, including a description of controls that the operator will use to maintain the DPM concentration; a list of diesel-powered units maintained by the mine operator; information about each unit's emission control device; demonstration of the plan's effectiveness; verification sampling; retention of a copy of the control plan at the mine site for the duration of the plan plus one year; and a plan duration of three years from the date of the violation resulting in establishment of the plan.

In accordance with the DPM settlement agreement, MSHA agreed to publish a notice of proposed rulemaking to revise current § 57.5062. The settlement agreement, however, did not specify how MSHA should revise this section. In the ANPRM, MSHA requested comments and ideas from the mining community as to how the control plan requirements should be revised.

Some commenters stated that there was no reason for MSHA to change this provision. These commenters emphasized that control plans are good industrial hygiene practice and should be the standard of practice for the mining industry. Other commenters felt strongly that the control plan was unnecessary in light of MSHA's intent to propose its long-standing hierarchy of controls for metal and nonmetal exposure-based standards. Some commenters opposed to a control plan stated that the purpose of the existing control plan was to prevent chronic excursions above the allowable concentration limit rather than allowing these excursions as part of the daily DPM control scheme. These commenters believed that the controls in place are sufficient to protect miners from DPM overexposures without introducing a cumbersome plan approval process. They further stated that MSHA could accomplish this through existing mechanisms such as section 104(b) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814) sanctions currently employed for failure to abate violations.

Other commenters opposing a control plan stated that not only was it unnecessary, but it also imposed upon mine operators unwarranted costs. They suggested that MSHA assess compliance by the operator's environmental monitoring and MSHA compliance sampling. Furthermore, following a hierarchy of controls approach would ensure miners' protection during non-compliance. They stated that formal plans would add little or nothing to established systems.

Some other comments that MSHA received on its question of whether to retain the control plan in a final rule included two which stated that a control plan was not necessary if mine operators put forth good-faith efforts in complying with the standard; and, that MSHA could monitor an operator's good faith efforts and obtain supporting documentation during regular inspections.

MSHA also asked in its ANPRM whether there was any benefit derived from retaining the control plan since the Agency intended to propose its long-

standing hierarchy of controls for controlling miners' exposures to DPM. In response, some commenters felt that substituting the hierarchy of controls for a DPM control plan would be unacceptable.

Commenters in favor of retaining the control plan stated that it requires mine operators to develop an organized written approach to controlling exposure and does not preclude developing a policy on the hierarchy of controls. The effectiveness of the standard depends on preparing and following a detailed control plan. Commenters believe that control plans are cost effective by forcing operators to control DPM efficiently. Control plans help MSHA determine if the company is acting in good faith. They help compliance assistance and provide information for the miners' representative to participate in safety and health programs. Commenters believe that an alternative would be a plan with more specific requirements for maintenance, vehicle inspection, emission controls, and fuel quality.

Although some commenters believe that a control plan is unnecessary, MSHA is proposing to retain this requirement. As expressed in the preamble to the existing rule, MSHA's rationale for requiring a DPM control plan is derived from the rule's approach to setting control requirements. MSHA recognizes that every mine covered by this rule has unique conditions and circumstances that affect DPM exposures such as the number and sizes of diesel-powered engines, idling duration and frequency, emission controls, diesel maintenance practices, and ventilation.

The Agency is interested in developing uniform DPM control requirements that are effective in protecting miners' health and practical for the mining industry to implement. MSHA acknowledges that there are numerous approaches in accomplishing this objective.

Operators may choose to control DPM emissions by filtering the diesel-powered equipment; installing cleaner-burning engines; increasing ventilation; improving fleet management; utilizing administrative controls; or using a variety of other readily available controls, all without consulting with, or seeking approval from MSHA. Given the wide variety of options and alternatives available to operators for controlling DPM exposures, the Agency believes that it needs to know what strategy the operator will be utilizing to control DPM exposures, particularly if compliance cannot be achieved within a short period of time.

Although MSHA is proposing to retain the control plan, the Agency, however, requests further comment on whether the control plan should be retained since MSHA is also proposing a DPM rule that includes hierarchy of controls. It is not MSHA's intent to duplicate compliance requirements in this rulemaking.

In proposed § 57.5062, MSHA would require an operator to establish a written control plan, or modify an existing control plan, if it will take the mine operator more than 90 calendar days from the date of a citation to achieve compliance. A single violation of the PEL would continue to be the basis for triggering the requirement for a control plan. The control plan would remain in effect for a one-year period following termination of the citation. Mine operators would also be required to include in the plan a description of the controls that will be used to reduce the miners' exposures to the PEL. MSHA intends to cite for a violation of the plan without regard for a miner's exposure to the PEL. MSHA believes that these requirements would prompt mine operators to properly maintain existing DPM controls at their mines.

Existing § 57.5062(e)(1) specifies that the control plan remain in effect for 3 years from the date of the violation which caused it to be established. MSHA asked the mining community for input regarding the appropriate duration of a revised control plan. Commenters responded that if the violation was minor and easily corrected, that the control plan could be simple in content and brief in duration.

MSHA believes that it is important to maintain the plan as long as the operator is working to reduce DPM exposures to the applicable limits. However, once the operator achieves compliance, MSHA believes that the need for maintaining a plan decreases. Accordingly, MSHA is proposing in § 57.5062(a) that a plan remain in effect for a period of one year after the citation is terminated.

MSHA does not intend to include a monitoring provision under the control plan because generic monitoring provisions in § 57.5071 would continue to apply during the existence of a control plan. MSHA expects mine operators to monitor as frequently as necessary to confirm that controls are effective in reducing the miners' exposure to the PEL. MSHA seeks further comment on the duration of time that the control plan should continue in effect once a citation for overexposure to DPM is terminated.

Existing § 57.5062(b) requires that the operator include in the plan a description of the controls that will be used to maintain the concentration of diesel particulate matter to the applicable limit specified by § 57.5060, a list of the diesel-powered units maintained by the mine operator, and information about each unit's emission control device. MSHA is proposing to simplify the contents of the plan and require that it only include a description of the controls the operator will use to reduce the miners' exposures to the PEL. MSHA believes that there could be a wide variety of information that operators may want to include in their plan, and that it is not beneficial to specify a few while leaving out many others. Therefore, MSHA intends to provide maximum flexibility of compliance for mine operators. This description should include all controls that the operator is using to reduce miners' exposures, including engineering controls, administrative controls, personal protective equipment, and maintenance procedures, to name a few.

Existing § 57.5062(e)(3) requires an operator to modify a DPM control plan during its duration as required to reflect changes in controls, mining equipment or circumstances. MSHA did not receive any comments in response to its ANPRM regarding modifications to the plan.

MSHA is proposing to retain this particular requirement consistent with the existing rule, with one minor modification. Proposed § 57.5062(c) would require that the operator modify the plan to reflect changes in controls, mining equipment, or continuing noncompliance. This would require mine operators to modify their plan when the results of sampling conducted by MSHA or the mine operator indicates that a miner's exposure exceeds the PEL. MSHA does not believe that this change will result in an increase in compliance costs or paperwork. The change is intended to clarify the existing provision. MSHA did not receive comments to its ANPRM on this issue.

Existing § 57.5062(a)(2) requires that the operator demonstrate that the new or modified DPM control plan parameters control the concentration of DPM to the concentration limit specified in § 57.5060. Mine operators must demonstrate plan effectiveness by monitoring, using the measurement method specified by § 57.5061(b) which addresses compliance determinations. Such monitoring must be sufficient to verify that the plan will control the concentration of DPM to the limit under conditions that can be reasonably anticipated in the mine. Further, the operator must retain a copy of each

verification sample result at the mine site for five years. Monitoring must be conducted in addition to, and not in lieu of, any other sampling the Secretary performs.

MSHA is proposing to delete the requirements for plan verification monitoring. The Agency believes that such monitoring is adequately addressed under § 57.5071, which requires mine operators to monitor in order to determine, under conditions that can be reasonably anticipated in the mine, whether DPM exposures exceed the applicable limits specified in § 57.5060. No monitoring frequency is specified under existing DPM monitoring requirements. MSHA believes that these requirements provide an effective alternative to the existing plan verification sampling requirements. Further, MSHA will conduct additional compliance sampling whenever the Agency suspects that miners' exposures to DPM are not being maintained to the PEL.

The Agency also believes that operator sampling may not always be necessary to determine if controls are being used or maintained. The proposed control plan would require that mine operators specifically describe the controls being used to reduce the miners' exposures to the DPM limit. If MSHA finds during an inspection that specified controls were missing or not being maintained, MSHA has existing enforcement tools to require that mine operators correct the situation.

MSHA is proposing to retain the requirement that mine operators keep a copy of the current control plan at the mine site for its duration. Existing § 57.5062(f) specifies that an operator's failure to comply with the provisions of the diesel particulate matter control plan in effect at a mine, or to conduct required verification sampling is a violation of this part without regard for the concentration of diesel particulate matter that may be present at any time. MSHA intends to adopt this position and cite mine operators for a violation of the plan without consideration of a miner's exposure to the DPM limit. The Agency is proposing to delete this requirement in the rule language only and explain this enforcement position in the preamble.

Existing § 57.5062(d) requires the operator to provide access to records maintained under this section to specified individuals and agencies. The existing rule further requires the mine operator to maintain a copy of the plan and the plan verification monitoring results. As explained earlier in this preamble, MSHA does not believe that verification monitoring is justified in a proposed rule. Pursuant to § 57.5071, MSHA has access to any record listed in the DPM rule, including an operator's control plan. This access, among other things, provides the Agency with the means to verify an operator's control plan without requiring additional compliance from mine operators. Therefore, MSHA intends to delete this requirement.

MSHA believes that this proposal would provide an alternative method of protecting miners' health provided for under the existing standard. MSHA is interested in providing compliance flexibility to mine operators where such flexibility does not compromise miners' health or safety. The Agency is proposing to retain the current requirement for a control plan with modifications to eliminate unnecessary requirements.

MSHA emphasizes that the proposed modifications do not compromise miners' health or safety under § 101(a)(9) of the Mine Act. Section 101(a)(9) provides: ''No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard.'' MSHA interprets this provision of the Mine Act to require that all of the health or safety benefits resulting from a new standard be at least equivalent to all of the health or safety benefits resulting from the existing standard when the two sets of benefits are evaluated as a whole. *Int'l Union* v. *Federal Mine Safety and Health Admin.*, 920 F.2d 960, 962–64 (D.C. Cir. 1990); *Int'l Union* v. *Federal Mine Safety and Health Admin.*, 931 F.2d 908, 911 (D.C. Cir 1991). The Agency believes that the proposal meets this test.

I. Section 57.5071 Exposure Monitoring

Proposed § 57.5071 would make conforming changes to the existing requirements for mine operators to monitor DPM levels to be consistent with the other changes being proposed. While the existing rule limits DPM concentration in the mine, the proposed rule would limit a miner's DPM exposure. Therefore, existing paragraph (a) requiring the mine operator to monitor the concentration of DPM would be revised to require mine operators to monitor a miner's full-shift airborne exposure.

Similarly, existing paragraph (c) requiring mine operators to take prompt corrective action when the concentration limit is exceeded would be revised to substitute ''PEL'' for ''concentration limit.''

J. Section 57.5075 Diesel Particulate Records

Existing § 57.5075(a) summarizes the recordkeeping requirements of the DPM standards contained in §§ 57.5060 through 57.5071. Proposed § 57.5075(a) would number the Diesel Particulate Recordkeeping Requirements table within the section without changing the requirements under existing § 57.5075(a). MSHA intends to delete table entries for existing § 57.5060(d), approved plan for miners to perform inspection, maintenance or repair activities in areas exceeding the concentration limit, and § 57.5062(c), compliance plan verification sample results. MSHA intends to add the requirement for maintaining a copy of the control plan for the duration of the plan in accordance with proposed § 57.5062(d). As a clarifying change to the table, MSHA also intends to add the existing requirement for posting notice of corrective action being taken under § 57.5071(c).

X. Regulatory Impact Analysis

This part of the preamble reviews several impact analyses which the Agency is required to provide in connection with its proposed rulemaking. The full text of these analyses can be found in the Agency's Preliminary Regulatory Economic Analysis (PREA).

A. Cost and Benefits: Executive Order 12866

Executive Order 12866 requires regulatory agencies to assess both the costs and benefits of regulations. In making this assessment, MSHA determined that although this final rule will not have an annual effect of $100 million or more on the economy, and therefore is not a significant regulatory action as defined by 3(f)(1) of E.O. 12866, the rule meets the § 3(f)(4) definition, that is, the rule may ''* * * raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.'' MSHA completed a Preliminary Regulatory Economic Analysis (PREA) which estimates both the costs and benefits of the rule. This PREA is available from MSHA and is summarized below.

Table X–1 presents the total yearly compliance costs by provision and mine size for the proposed revisions. All MSHA cost estimates are presented in 2001 dollars. The proposed rule would result in a net cost of $4,539 per year for underground metal and nonmetal mine operators. This would be an average cost of $25 for each of the 182 underground

metal and non-metal mines that would be affected by this proposed rule. Of these 182 mines, 65 have fewer than 20 workers, 113 have 20 to 500 workers; and 4 have more than 500 workers. The average cost per mine for mines in these three size classes would be −$34 (a cost savings), $58, and $58, respectively.

TABLE X–1.—TOTAL YEARLY COMPLIANCE COSTS

Provision	Mine size			Total
	<20	20–500	>500	
Special Extensions 57.5060(c)	$6,179	$21,117	$748	$28,044
Respirator Protection 57.5060(d)	−2,569	−4,466	−158	−7,192
DPM Control Plan 57.5062	−5,826	−10,128	−359	−16,313
Total	−2,215	6,523	231	4,539

B. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, MSHA must use the Small Business Act definition of a small business concern in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, and after opportunity for public comment, MSHA establishes a definition which is appropriate to the activities of the agency and publishes that definition in the **Federal Register**. For the mining industry, SBA defines ''small'' as having 500 or fewer workers. MSHA has traditionally considered small mines to be those with fewer than 20 workers. To ensure that the rule conforms with the RFA, MSHA analyzed the economic impact on mines with 500 or fewer workers and also on mines with fewer than 20 workers. MSHA concluded that the rule will not have a significant economic impact on a substantial number of small entities under either definition.

C. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, the rule does not include any Federal mandate that may result in increased expenditures of more than $100 million incurred by state, local, or tribal governments, or by the private sector.

D. Paperwork Reduction Act of 1995 (PRA)

This proposed rule contains changes to two information collection requirements, both of which were approved by the Office of Management and Budget (OMB) as part of Information Collection No. 1219–0135, which expires on September 30, 2004.

The proposed changes were submitted to OMB for review pursuant to the PRA, as codified at 44 U.S.C. 3501–3520 and implemented by OMB in regulations at 5 CFR part 1320. The PRA defines collection of information as ''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.''

The proposed paperwork requirement changes are contained in §§ 57.5060 and 57.5062. There are burden hours and associated costs that will occur only in the first year that the provision is in effect, and there are burden hours and associated costs that will occur every year the rule is in effect, starting with the first year (''annual'' burden hours and costs). Due to different requirements in these provisions for the interim and final limits, the effective dates vary. In the first year, mine operators will incur a net of 1,047.78 burden hours and associated costs of $2,479. in year one.

In year two only, mine operators will incur 613.17 burden hours and associated annualized costs of $1,776. There is a reduction of 931.96 burden hours occurring only in year three. The present value of the cost savings associated with these burden hours is $6,343. Starting in year three, there is a reduction in annual burden hours of 103.55. The discounted value of the cost savings associated with these burden hours is $3,738 annually. Mine operators will incur 613.17 annual burden hours starting in year four. The discounted value of the cost associated with these burden hours is $22,161 annually.

Included in these estimates are the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. MSHA invites comments on: (1) Whether any proposed collection of information presented here (and further detailed in the Agency's PREA) is necessary for proper performance of MSHA's functions, including whether the information will have practical utility; (2) the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

The Agency has submitted a copy of this proposed rule to OMB for its review and approval of these information collections. The complete paperwork submission is contained in the Preliminary Regulatory Economic Analysis and Preliminary Regulatory Flexibility Analysis (PREA/PRFA) and includes the estimated costs and assumptions for each proposed paperwork requirement (these costs are also included in the Agency's cost and benefit analyses for the proposed rule). A copy of the PREA/PRFA is available at *http://www.msha.gov/regsinfo.htm.* These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

F. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This proposed rule is not subject to Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

G. Executive Order 12988: Civil Justice Reform

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that the proposed DPM rule

would not unduly burden the Federal court system. The proposed rule has been written so as to provide a clear legal standard for affected conduct and has been reviewed carefully to eliminate drafting errors and ambiguities.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effects of the proposed DPM rule on children. The Agency has determined that the proposed rule would not have an adverse impact on children.

I. Executive Order 13132: Federalism

MSHA has reviewed the proposed DPM rule in accordance with Executive Order 13132 regarding federalism and has determined that it would not have any federalism implications. The proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

J. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

MSHA has determined that the proposed DPM rule would not impose substantial direct compliance costs on Indian tribal governments.

K. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the Agency has reviewed proposed DPM rule for its energy impacts. The rule would have no effect on the supply, distribution or use of energy.

L. Executive Order 13272: Proper Consideration of Small Business Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the proposed DPM rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in Chapter V of the PREA, MSHA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

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List of Subjects in 30 CFR Part 57

Diesel particulate matter, Metals, Mine safety and health, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, MSHA proposes to amend Chapter I of Title 30 as follows:

1. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811 and 813.

2. Section 57.5060 is amended by revising paragraphs (a), (c)(1), (c)(2), (c)(3), (c)(4), (d), and (e) and removing paragraphs (c)(5) and (f) to read as follows:

§ 57.5060 Limit on concentration of diesel particulate matter.

(a) A miner's personal exposure to diesel particulate matter (DPM) in an underground mine shall not exceed an average eight-hour equivalent full shift airborne concentration of 308 micrograms of elemental carbon per cubic meter of air (308_{EC} μg/m^3). [This interim permissible exposure limit (PEL) shall remain in effect until the final DPM exposure limit becomes effective.]

* * * * *

(c)(1) If a mine requires additional time to come into compliance with the applicable limits established in paragraphs (a) and (b) of this section due to technological or economic constraints, the operator of the mine may file an application with the district manager for a special extension.

(2) The mine operator must certify on the application that the operator has posted one copy of the application at the mine site for at least 30 days prior to the date of application, and has provided another copy to the authorized representative of miners.

(3) No approval of a special extension shall exceed a period of one year from the date of approval. Mine operators may file for additional special extensions provided each extension does not exceed a period of one year. An application must include the following information:

(i) A statement that diesel-powered equipment was used in the mine prior to October 29, 1998;

(ii) Documentation supporting that controls are technologically or economically infeasible at this time to reduce the miner's exposure to the DPM limit.

(iii) The most recent DPM monitoring results.

(iv) The actions the operator will take during the extension to minimize exposure of miners to DPM.

(4) A mine operator must comply with the terms of any approved application for a special extension, post a copy of the approved application for a special extension at the mine site for the duration of the special extension period, and provide a copy of the approved application to the authorized representative of miners.

(d) The mine operator shall install, use, and maintain feasible engineering and administrative controls to reduce a miner's exposure to or below the DPM limit established in this section. When controls do not reduce a miner's DPM exposure to the limit, controls are infeasible, or controls do not produce significant reductions in DPM exposures, controls shall be used to reduce the miner's exposure to as low a level as feasible and shall be supplemented with respiratory protection in accordance with § 57.5005(a), (b), and paragraphs (d)(1) and (d)(2) of this section.

(1) Air purifying respirators shall be equipped with the following:

(i) Filters certified by NIOSH under 30 CFR part 11 (appearing in the July 1, 1994 edition of 30 CFR, parts 1 to 199) as a high efficiency particulate air (HEPA) filter;

(ii) Filters certified by NIOSH under 42 CFR part 84 as 99.97% efficient; or

(iii) Filters certified by NIOSH for diesel particulate matter.

(2) Nonpowered, negative-pressure, air purifying, particulate-filter respirators shall use an R- or P-series filter or any filter certified by NIOSH for diesel particulate matter. An R-series filter shall not be used for longer than one work shift.

(e) Rotation of miners shall not be considered an acceptable administrative control used for compliance with this section.

3. Section 57.5061 is revised to read as follows:

§ 57.5061 Compliance determinations.

(a) MSHA shall use a single sample collected and analyzed by the Secretary in accordance with the requirements of this section as an adequate basis for a determination of noncompliance with the DPM limit.

(b) The Secretary will collect samples of diesel particulate matter by using a respirable dust sampler equipped with a submicrometer impactor and analyze the samples for the amount of elemental carbon using the method described in NIOSH Analytical Method 5040, except that the Secretary also may use any methods of collection and analysis subsequently determined by NIOSH to provide equal or improved accuracy for the measurement of diesel particulate matter.

(c) The Secretary will use full-shift personal sampling for compliance determinations.

4. Section 57.5062 is revised to read as follows:

§ 57.5062 Diesel particulate matter control plan.

(a) When it will take the operator more than 90 calendar days from the

date of a citation for violating § 57.5060 to achieve compliance, the operator shall establish and implement a written plan to control the miner's exposure. The plan shall remain in effect for a period of one year after the citation is terminated.

(b) The plan must include a description of the controls the operator will use to reduce the miner's exposure to the DPM limit.

(c) The operator must modify the plan to reflect changes in controls, mining equipment, or continuing noncompliance.

(d) The operator must retain a copy of the plan at the mine site for the duration of the plan.

5. Section 57.5071 is amended by revising the section heading and by revising paragraphs (a) and (c) to read as follows:

§ 57.5071 Exposure monitoring.

(a) Mine operators must monitor as often as necessary to effectively determine, under conditions that can be reasonably anticipated in the mine, whether the average personal full-shift airborne exposure to DPM exceeds the DPM limit specified in § 57.5060.

* * * * *

(c) If any monitoring performed under this section indicates that a miner's exposure to diesel particulate matter exceeds the DPM limit specified in § 57.5060, the operator must promptly post notice of the corrective action being taken on the mine bulletin board, initiate corrective action by the next work shift, and promptly complete such corrective action.

* * * * *

6. Section 57.5075 is amended to revise paragraph (a) to read as follows:

§ 57.5075 Diesel particulate records.

(a) Table 57.5075(a), ''Diesel Particulate Recordkeeping Requirements'' lists the records the operator must retain pursuant to §§ 57.5060 through 57.5071, and the duration for which particular records need to be retained.

TABLE 57.5075(A).—DIESEL PARTICULATE RECORDKEEPING REQUIREMENTS

Record	Section reference	Retention time
1. Approved application for extension of time to comply with exposure limits.	§ 57.5060(c)	Duration of extension.
2. Control plan	§ 57.5062(a)	Duration of plan.
3. Purchase records noting sulfur content of diesel fuel	§ 57.5065(a)	1 year beyond date of purchase.
4. Maintenance log	§ 57.5066(b)	1 year after date any equipment is tagged.
5. Evidence of competence to perform maintenance	§ 57.5066(c)	1 year after date maintenance performed.
6. Annual training provided to potentially exposed miners	§ 57.5070(b)	1 year beyond date training completed.
7. Record of corrective action	§ 57.5071(c)	Until the citation is terminated.
8. Sampling method used to effectively evaluate particulate concentration, and sample results.	§ 57.5071(d)	5 years from sample date.

* * * * *

Dated: July 25, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

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Part III

Securities and Exchange Commission

17 CFR Part 240

Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34–48301; IC–26145; File No. S7–14–03]

RIN 3235–AI90

Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing new disclosure requirements and amendments to existing disclosure requirements to enhance the transparency of the operation of boards of directors. Specifically, we are proposing enhancements to existing disclosure requirements regarding the operation of board nominating committees and a new disclosure requirement concerning the means, if any, by which security holders may communicate with members of the board of directors. These proposed disclosure requirements would not mandate any particular action by a company or its board of directors; rather, the proposals are intended to make more transparent to security holders the operation of the boards of directors of the companies in which they invest.

DATES: Comments should be received on or before September 15, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method—U.S. mail or electronic mail—only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–14–03. This number should be included in the subject line if sent via electronic mail. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*). We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Lillian K. Cummins, at (202) 942–2900, Andrew Thorpe at (202) 942–2910, or Grace K. Lee, at (202) 942–2900 in the Division of Corporation Finance, or with respect to investment companies, Christian L. Broadbent, Senior Counsel, Division of Investment Management, at (202) 942–0721, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0402.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Items 7 and 22 of Schedule 14A [1] under the Securities Exchange Act of 1934.[2] Although we are not proposing amendments to Schedule 14C [3] under the Exchange Act, the proposed amendments will affect the disclosure provided in Schedule 14C, as Schedule 14C requires disclosure of some items of Schedule 14A.

I. Introduction

A. Review of the Proxy Rules Regarding Procedures for the Election of Directors

On April 14, 2003, the Commission directed the Division of Corporation Finance to formulate possible changes in the proxy rules regarding procedures for the election of corporate directors.[4] On May 1, 2003, the Commission solicited public views on the Division's review of the proxy rules relating to the nomination and election of directors.[5] The majority of commenters supported the Commission's decision to direct this review.[6] Reflecting concern over the accountability of corporate directors and recent corporate scandals, commenters generally urged the Commission to adopt rules that would grant security holders greater access to the nomination process and greater ability to exercise their rights and responsibilities as owners of their companies.[7] In addition, many of those commenters noted that current director nomination procedures afford little meaningful opportunity for participation or oversight by security holders.[8]

Many of the comments received in connection with the Division's review evidence a growing concern among security holders that they lack sufficient input into decisions made by the boards of directors of the companies in which they invest.[9] Two particular areas of concern regard the nomination of candidates for election as directors and the ability of security holders to communicate effectively with members of the board of directors.[10]

B. Current Disclosure Regarding Nominating Committees and Security Holder Communications With Boards of Directors

In 1977, the Commission undertook a thorough review of security holder communications, security holder participation in the corporate electoral process, and corporate governance generally. The Commission solicited written comment and held hearings as part of that review. While an important focus of the hearings was security holder access to company proxy materials, the Commission also requested comment on whether more disclosure related to the nominating process and nominating committees would be appropriate.[11]

In response to the Commission's 1977 request, commenters recommended that nominating committees be required to consider security holder nominees, that outside directors comprise all or a majority of nominating committees,[12] and that security holders be advised of ''the existence and purpose of such committee and its standards for director qualifications.''[13] Commenters favoring these requirements indicated their view that they would encourage security holders to contact nominating committee members with their

[1] 17 CFR 240.14a–101.

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.14c–101.

[4] *See* Press Release No. 2003–46 (April 14, 2003).

[5] *See* Release No. 34–47778 (May 1, 2003) [68 FR 24530]. In addition to receiving written comments, the Division spoke with a number of interested parties representing security holders, the business community, and the legal community. Each of the comment letters received, memoranda documenting the Division's meetings, and a summary of the comments are included on the Commission's Web site, *http://www.sec.gov*, in comment file number S7–10–03. [Summary of Comments in Response to the Commission's Solicitation of Public Views Regarding Possible Changes to the Proxy Rules (July 15, 2003)].

[6] *See* 2003 Summary of Comments.

[7] *See id.*

[8] *See id.*

[9] *See id.*

[10] The Division's review also addressed the issue of security holders' ability to access company proxy materials for purposes of nominating candidates for election as directors. The Commission expects that its proposals regarding this significant issue will be included in a separate release published this fall. As such, this proposing release does not address that issue directly. The Division's Staff Report to the Commission, detailing the results of its review of the proxy process related to the nomination and election of directors, can be found on the Commission's Web site at *http://www.sec.gov*. [Staff Report: Review of the Proxy Process Regarding the Nomination and Election of Directors, Division of Corporation Finance (July 15, 2003)].

[11] *See* Release Nos. 34–13482 (April 28, 1977) [42 FR 23901] and 34–13901 (August 29, 1977) [42 FR 44860].

[12] *See* Re-Examination of Rules Relating to Security Holder Communications, Security Holder Participation in the Corporate Electoral Process and Corporate Governance Generally, Summary of Comments (1978), at 65.

[13] *Division of Corporation Finance, Securities and Exchange Comm'n, Staff Report on Corporate Accountability* (Sept. 4, 1980) (printed for the use of Senate Comm. on Banking, Housing, and Urban Affairs, 96th Cong., 2d Sess.), at A54.

recommendations; however, the commenters were less supportive of disclosure relating to the nominee selection process, the criteria to be applied by the nominating committee in selecting nominees, and the required qualifications of nominees.[14] Those who did not support expanded nominating committee disclosure stated their concern that companies would merely make ''self-serving 'boilerplate' '' disclosures.[15]

In the 1978 release proposing amendments to the proxy rules to include the current disclosure requirements related to nominating committees, the Commission stated generally its belief that the new disclosure requirements would facilitate improved accountability.[16] Specifically, the Commission stated that:

> * * * information relating to nominating committees would be important to security holders because a nominating committee can, over time, have a significant impact on the composition of the board and also can improve the director selection process by increasing the range of candidates under consideration and intensifying the scrutiny given to their qualifications. Additionally, the Commission believes that the institution of nominating committees can represent a significant step in increasing security holder participation in the corporate electoral process, a subject which the Commission will consider further in connection with its continuing proxy rule re-examination.[17]

The Commission ultimately adopted nominating committee disclosure standards, currently found in Item 7 of Exchange Act Schedule 14A, that, among other requirements, require a company to state whether they have a nominating committee and, if so, whether the nominating committee will consider security holder nominees.[18]

Following the Commission's adoption of the nominating committee disclosure requirements, a 1980 staff report to the Senate expressed the view that, due to the emerging concept of nominating committees, the Commission should not propose and adopt a security holder access rule at that time.[19] The staff report recommended, however, that the staff monitor the development of nominating committees and their consideration of security holder recommendations.[20]

II. Proposed Disclosure Requirements

A. Enhanced Nominating Committee Disclosure

1. Necessity for the Proposal

Companies currently must disclose whether they have a nominating committee and, if so, whether the committee considers nominees recommended by security holders and how any such recommendations may be submitted.[21] Based on the comments received in response to the Commission's solicitation of public input, it does not appear that the existing disclosure requirements have effected significant change in the transparency of, or increased security holder understanding of, the nominating process. In particular, commenters indicated that the existing disclosure requirements have resulted in mere boilerplate disclosure and, as such, have not provided investors with the information necessary to understand the nominating process at the companies in which they invest.[22]

We are proposing new disclosure requirements that would expand disclosure in company proxy statements regarding the nominating committee and the nominating process. This enhanced disclosure is intended to provide security holders with additional, specific information upon which to evaluate the boards of directors and nominating committees of the companies in which they invest. Further, we intend that increased transparency of the nominating process will make that process more understandable to security holders.

In particular, we have proposed a number of specific and detailed disclosure requirements because we believe that each of these requirements may be necessary in order to assist security holders in understanding each of the processes and policies of the nominating committees and boards of directors of companies regarding the nomination of candidates for director. We request comment on whether each of these detailed requirements is appropriate for that purpose and whether there are additional specific and detailed disclosures that should be required.

2. Proposed Disclosure Requirements

The amendments we are proposing today would expand the current proxy statement disclosure regarding a company's nominating or similar committee to require:

- A statement as to whether or not the company has a standing nominating committee or a committee performing similar functions[23] and, if the company does not have such a committee, a statement of the specific basis for the view of the board of directors that it is appropriate for the company not to have such a committee and the names of those directors who participate in the consideration of director nominees;[24]
- The following disclosure regarding the nominating process:[25]
- If the nominating committee has a charter, a description of the material terms of the nominating committee charter and disclosure as to where the nominating committee charter is available, which can be the company's Web site;
- If the nominating committee does not have a charter, a statement of that fact;
- If the company is a listed issuer[26] whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Exchange Act[27] or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act[28] that has independence requirements for nominating committee members, disclosure of any instance during the

[14] *See* 1978 Summary of Comments, at 75.

[15] *See id.*

[16] *See* Release No. 34–14970 (July 18, 1978) [43 FR 31945].

[17] *See id.*

[18] *See* Release No. 34–15384 (December 6, 1978) [43 FR 58522].

[19] The Task Force on Corporate Accountability was formed as an outgrowth of the review of the proxy rules that began in 1977. The work of the Task Force culminated in the Staff Report on Corporate Accountability, completed and presented to the Senate Committee on Banking, Housing, and Urban Affairs. *See Staff Report on Corporate Accountability,* at A60–65.

[20] The *Staff Report on Corporate Accountability* states: ''* * * all nominating committees should be open to suggestions of nominees from security holders.'' *Id.*, at A56.

[21] *See* Paragraphs (d)(1) and (d)(2) of Item 7 of Exchange Act Schedule 14A.

[22] *See* 2003 Summary of Comments.

[23] As noted earlier in this release, this disclosure currently is required under Paragraph (d)(1) of Item 7 of Exchange Act Schedule 14A.

[24] Under proposed listing standards, a company that is listed on the NYSE would be required to have an independent nominating committee. Under NASD proposed listing standards, a Nasdaq Stock Market-quoted company would be required to have an independent nominating committee or, in the alternative, have nominees determined by a majority of independent directors. *See* Release Nos. 34–47672 (April 11, 2003) [68 FR 19051] and 34–47516 (March 17, 2003) [68 FR 14451].

[25] For the remainder of our discussion of this proposed disclosure requirement, the term ''nominating committee'' refers to a nominating committee or similar committee or group of directors fulfilling the role of a nominating committee. That group may comprise the full board. If the company has a standing nominating committee or a committee fulfilling the role of a nominating committee, Item 7(d)(1) of Schedule 14A requires identification of the members of that committee. If the company does not have such a standing committee, the proposed amendments to Paragraph (d)(2) of Item 7 of Schedule 14A would require the identification of each director who participates in the consideration of director nominees.

[26] As defined in Exchange Act Rule 10A–3 [17 CFR 240.10A–3].

[27] 15 U.S.C. 78f(a).

[28] 15 U.S.C. 78o-3(a).

last fiscal year where any member of the nominating committee did not satisfy the definition of independence in the listing standards of the market on which they are listed or quoted; [29]

• If the company is not a listed issuer,[30] disclosure of whether each of the members of the nominating committee are independent. In determining whether a member is independent, the company must use a definition of independence of a national securities exchange registered pursuant to Section 6(a) of the Exchange Act or a national securities association registered pursuant to Section 15A(a) of the Exchange Act that has been approved by the Commission (as that definition may be modified or supplemented), and state which definition it used. Whatever definition the company chooses, it would have to apply that definition consistently to all members of the nominating committee and use the independence standards of the same national securities exchange or national securities association for purposes of nominating committee disclosure under this requirement and audit committee disclosure under Exchange Act Rule 10A–3;

• If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, a description of the material elements of that policy, which shall include, but not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;

• If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, a statement of that fact;

• If the nominating committee will consider candidates recommended by security holders, a description of the procedures to be followed by security holders in submitting such recommendations;[31]

• A description of any specific, minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the company's board of directors, any specific qualities or skills that the nominating committee believes are necessary for one or more of the company's directors to possess, and any specific standards for the overall structure and composition of the company's board of directors;

• A description of the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether or not the nominee is recommended by a security holder;

• A statement of the specific source, such as the name of an executive officer, director, or other individual, of each nominee (other than nominees who are executive officers or directors standing for re-election) approved by the nominating committee for inclusion on the company's proxy card;

• If the company pays a fee to any third party or parties to identify or assist in identifying or evaluating potential nominees, disclosure of the function performed by each such third party; and

• If the nominating committee (a) receives a recommended nominee from a security holder or group of security holders who individually, or in the aggregate, beneficially owned greater than 3% [32] of the company's voting common stock for at least one year as of the date of the recommendation,[33] and (b) the nominating committee decides not to nominate that candidate, disclosure of: [34]

• The name or names of the security holders who recommended the candidate; and

• The specific reasons for the nominating committee's determination not to include the candidate as a nominee.[35]

As previously discussed, the disclosure that would be required by each of the proposed disclosure standards described above would provide security holders with important information regarding the management of the companies in which they invest. Commenters who responded to the Commission's solicitation of public views indicated the necessity for increased specific disclosure regarding the functioning of the nominating committees of public companies.[36] The disclosure standard we propose today would build upon existing disclosure requirements to require a number of specific disclosures.

We believe that the proposed detailed disclosure requirements regarding the decision to have a nominating committee or not, the nominating committee's charter, if any, its processes for identifying and evaluating candidates, and the minimum qualifications and qualities, skills and standards that the nominating committee believes are necessary or desirable for nominees and the board, are necessary to give security holders a more complete overview of the nominating process for directors of the companies in which they invest. We believe that information as to whether nominating committee members are independent within the requirements of proposed listing standards applicable to a company is meaningful to a security holder in evaluating the nominating process of that company, how that process works, and the seriousness with which it is considered by the company. We believe that identification of the source of each nominee and disclosure as to whether there are third parties that receive compensation related to

[29] For purposes of this disclosure requirement, to the extent the market on which the company is listed permits a member of a nominating committee to rely on an exclusion from applicable independence standards, and a member of a nominating committee is not independent in reliance on that exclusion, this disclosure would not be required.

[30] As defined in Exchange Act Rule 10A–3.

[31] This disclosure currently is required under Paragraph (d)(2) of Item 7 of Exchange Act Schedule 14A.

[32] In addition to the disclosure proposed today, the Division of Corporation Finance Staff Report, dated July 15, 2003, also recommended new rules to require enhanced security holder access to the nomination process. The issue of the appropriate ownership threshold, if any, for any such enhanced access is a separate issue from the appropriate ownership threshold for the disclosure we are proposing today and is not addressed in this release.

[33] Similar to the method used in Exchange Act Rule 14a–8 [17 CFR 240.14a–8] with regard to shareholder proponents, the percentage of securities held by a nominating security holder, as well as the holding period of those securities may be determined by the company, on its own, if the security holder is the registered holder of the securities. If not, the security holder can submit one of the following to the company to evidence the required ownership and holding period:

(1) a written statement from the ''record'' holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

(2) if the security holder has filed a Schedule 13D (§ 240.13d–101), Schedule 13G (§ 240.13d–102), Form 3 (§ 249.103), Form 4 (§ 249.104), and/or Form 5 (§ 249.105), or amendments to those documents or updated forms, reflecting ownership of the shares as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the required securities for the one-year period as of the date of the recommendation.

[34] Information available to our Office of Economic Analysis indicates that, of the companies listed on the New York Stock Exchange, Nasdaq Stock Market and American Stock Exchange as of December 31, 2002, more than 70% had at least one institutional security holder that beneficially owned more than 3% of the common equity or similar securities and 13% had five or more such security holders. This information was derived from filings on Exchange Act Form 13F (17 CFR 249.325), that indicated that the filing security holder had held their securities for at least one year.

[35] Disclosure of the names of any recommended candidates would not be required.

[36] *See* 2003 Summary of Comments.

identifying and evaluating candidates, which we expect will generally be executive search firms, provides important information as to the process followed by a company. In the absence of these specific proposed disclosure requirements, we believe that disclosure could be at a level of generality that would not be sufficiently helpful to security holders in understanding the nominating process.

We also believe that it is important for security holders to understand the application of the nominating processes specifically to candidates put forward by security holders. The ability to participate in the nominating process is an important matter for security holders.[37] Disclosure as to whether and how they may participate in a company's nominating process, and the manner in which security holder candidates are evaluated, including differences between how they are evaluated and other candidates are evaluated, therefore represents important information for security holders. Specific disclosure requirements regarding the treatment of candidates put forward by large security holders or groups of security holders that have a long-term investment interest are appropriate, given the particular concerns of these investors as to how they might participate in the nominating process. Again, we believe that specific detailed disclosure requirements are necessary and appropriate to assure the desired degree of clarity and transparency regarding these matters, and that more general requirements may not achieve our desired objective.

3. Interaction of the Proposed Disclosure Requirements With Proposed Listing Standard Amendments of the Markets

The New York Stock Exchange and the Nasdaq Stock Market have proposed revised listing standards that would require listed companies to have independent nominating committees.[38] While these proposed listing standard changes demonstrate the importance of the nominating process and the nominating committee, and represent a strengthening of the role and independence of the nominating committee, they would not require nominating committees to consider security holder nominees or companies to make the disclosures described above. The disclosure requirements we propose today would provide useful information to security holders regarding the nominating process, the manner of evaluating nominees, and the extent to which the boards of directors of the companies in which they invest have a process for considering, and do in fact consider, security holder recommendations. Accordingly, the proposed disclosure requirements would operate in conjunction with any proposed listing standards regarding nominating committees that are adopted.

In response to our solicitation of input into the proxy review by the Division of Corporation Finance, a number of commenters from the business community and their advisors made clear their view that the proposed listing standards regarding nominating committees represent a significant strengthening of the nominating process and should be allowed to take effect and operate before we take any further action regarding the election of directors.[39] Nearly 25 years have passed since the adoption of our disclosure requirements regarding nominating committees. The many comments reflecting a continued lack of security holder access to the director nomination process and security holder dissatisfaction with that process[40] are evidence that the promise of those earlier amendments has not been realized. As such, it is appropriate to consider those additional, constructive steps that we can now take to complement any proposed listing standards that are adopted. We believe that the disclosure requirements we propose today are appropriate steps in this process. We also believe that consideration must be given to additional security holder access to the proxy process in connection with the election of directors, as will be discussed further in a proposing release that we expect to publish this fall.

4. Questions Regarding Enhanced Nominating Committee Disclosure

1. Would increased disclosure related to the nominating committee and its policies and criteria for considering nominees be an effective means to increase security holder understanding of the nominating process, board accountability, board responsiveness, and corporate governance policies?

2. (a) If so, do the proposed specific disclosure standards, including those in each of the following areas, provide security holders with useful information that provides an understanding of a company's nominating process:

- The existence of a nominating committee;
- The nominating committee charter, if any;
- Compliance with applicable nominating committee independence requirements;
- The process for identifying and evaluating candidates;
- The qualifications and standards for director nominees;
- The source of candidates other than those standing for re-election; and
- The involvement of third parties receiving compensation for identifying and evaluating candidates?

(b) If so, do the proposed specific disclosure standards, including those in each of the following areas, provide security holders with useful information that provides an understanding of the ability of security holders to participate in the nominating process:

- Policies for consideration of security holder candidates;
- Procedures for submission of security holder candidates; and
- Specific information regarding consideration of candidates submitted by large, long-term security holders or groups of security holders?

3. As noted above, the proposed disclosure requirements are intended to provide security holders with detailed, specific information that we believe is important. Are there alternative means to better achieve our objective? For example, would it be more appropriate to include a broader, less detailed disclosure standard? Would any of the detailed disclosure requirements within the proposed standard result in disclosure that is unnecessarily detailed for the purpose of providing security holders with useful information regarding the management of the companies in which they invest? If so, describe specifically the basis for that conclusion.

4. We propose to require disclosure of the material terms of the nominating committee charter. Instead of requiring companies to disclose the material terms of the charter, should we require that the company attach the nominating committee charter to the proxy statement? If so, should companies be required to attach it every year? Should we require that the charter be filed with the Commission? Should we require disclosure of any (or only material) amendments to the charter? Does Web site disclosure provide sufficient access

[37] *See id.*

[38] *See* Release No. 34–47672 (April 11, 2003) and Release No. 34–47516 (March 17, 2003). While the NYSE proposal includes an absolute requirement that listed companies have an independent nominating committee, the proposed Nasdaq standards provide that the nomination of directors may, alternatively, be determined by a majority of the independent directors. In discussing the NYSE and Nasdaq proposals, our references to independent nominating committees encompass this alternative under the Nasdaq proposal.

[39] *See* 2003 Summary of Comments.

[40] *See id.*

to investors? Should companies be required to provide investors a copy of the charter upon request?

5. We propose to require disclosure of any instances where a member of a company's nominating committee did not satisfy the applicable listing requirements for independence. In addition, we propose to require similar disclosure for unlisted companies. We request comment on whether the disclosures will help inform investors about the independence of the nominating committee. If the markets do not adopt the proposed amendments to the listing standards, are there disclosures that we could require that would achieve the same purposes? Should we require companies whose securities are not listed on an exchange or quoted in the Nasdaq Stock Market to disclose whether the members of their nominating committee, if any, meet any of the independence definitions of the proposed amendments to the listing standards? Is it appropriate to let issuers choose which definition? Should disclosure be required even if the noncompliance has been cured by the time the proxy statement is prepared?

6. We propose to require disclosure concerning a nominating committee's policy with regard to the consideration of security holder recommendations. If a committee has no policy, should we require the company to disclose the reason it does not have a policy? In the absence of a formal policy, are there other disclosures a company should be required to provide to investors to help them understand the standard(s) a committee uses in determining a suitable candidate?

7. Where security holders have the ability to recommend a nominee for a company's board of directors, meaningful participation by security holders should be facilitated by disclosure of information regarding the process for security holder nominations. As such, we have proposed to require disclosure of the procedures for submitting recommendations. Should we require disclosure during the year of any changes made to the procedure, for example in the next Form 10–Q or Form 10–QSB or on Form 8–K?

8. We have proposed requiring disclosure of information regarding criteria used by a nominating committee to screen nominee candidates and the minimal qualifications that the committee believes must be met by a nominee. Are there other eligibility requirements or qualifications about which investors should be informed? Should we require the company to disclose when it chooses candidates who do not meet the criteria? Should there be a specific disclosure requirement as to whether the company applies the same criteria to candidates recommended by security holders as to company nominees?

9. We have proposed that companies be required to describe the source of each of their nominees for director other than nominees who are executive officers or directors standing for re-election—including the name of each source—and their nominating committee's process for identifying and evaluating candidates. In addition to the name of each candidate's sponsor, should we require disclosure of any financial interest between the candidate and sponsor? Should we require disclosure of any other interest? Is the name of the source important to security holders? Instead, should we require disclosure of the person's title (*e.g.*, chief executive officer) or simply whether the source is an officer or director of the company? Should we require the name of the source only where the source is a director of the company, an employee of the company, or related to a director or employee of the company? If the source is not a director, an employee, or related to a director or employee, should we permit the source to be identified by category rather than name (*e.g.*, security holder, third party firm paid by the company)? Are the proposed exceptions to the requirement appropriate?

10. We have proposed requiring disclosure of information regarding the function performed by any third parties paid by the company. Should we require a company to disclose the methodology the third party uses to select candidates? Should we require a company to identify any such third parties?

11. We propose to require disclosure regarding candidates that were recommended by certain security holders and rejected by the nominating committee. Would this type of disclosure raise privacy issues for rejected candidates, even if the candidates were not specifically named in the company's disclosure? Would it raise privacy issues for the recommending security holders? The proposed disclosure requirements with regard to rejected security holder-recommended candidates would not preclude a company from naming the candidates, though such disclosure would not be required under the proposed rule. Should the rule specify that companies should not disclose the names of rejected candidates? Should the rule specify that companies must include the name of any rejected candidate who consents to being so identified in the company's proxy statement?

12. Are the proposed threshold requirements for a security holder recommendation that would trigger additional disclosure requirements by the company (*i.e.*, recommendations from security holders that have beneficially held more than 3% of the company's securities for at least one year) appropriate? If not, what ownership threshold, if any, would be appropriate (*e.g.*, no threshold, 1%, 2%, 4%, 5%, or higher) and what holding period, if any, would be appropriate (*e.g.*, no threshold, 2 years, 3 years, 4 years, or longer)? Should we use a different threshold, such as the three, four, or five largest security holders who are not directors or officers of the company? As proposed, the rules would not require that the nominating security holder indicate an intent to continue to own the securities for any specified period of time. Should we include such a requirement? If so, what is the appropriate period over which the security holder must intend to continue to own the securities (*e.g.*, through the date of the related security holder meeting, six months after the recommendation, one year after the recommendation, or longer)? Is the proposed method to determine whether a security holder or group of security holders meets the threshold requirements to trigger additional disclosure by the company appropriate? For example, are the means of proving ownership appropriate? If not, what would be a more appropriate means? Is it appropriate to calculate ownership as of the date of the recommendation? If not, what other date would be more appropriate? Should we include a specific method of determining beneficial ownership for purposes of this disclosure item? For example, should securities underlying options be included or excluded for purposes of calculating the ownership threshold?

13. Would the proposed disclosure requirements have unintended adverse effects on the nominating process? Would they increase the burdens on members of nominating committees or discourage service on nominating committees? If so, please provide specific reasons supporting your responses to these questions.

B. Disclosure Regarding the Ability of Security Holders To Communicate With the Board of Directors

1. Necessity for the Proposal

During the past proxy season, as well as in the recent review of the proxy rules relating to the nomination and

election of directors, we have become increasingly aware of investors' desire for a means by which to communicate with the directors of the companies in which they invest.[41] Although Exchange Act Rule 14a–8 already creates a possible mechanism for security holders to seek further access to communicate with the board, investors and investor advocacy groups have indicated that this mechanism would be enhanced meaningfully by a process that allows security holders to communicate directly with board members.[42]

Providing security holders with disclosure about the process for communicating with board members would improve the transparency of board operations, as well as security holder understanding of the companies in which they invest. The Commission has published a NYSE listing standard proposal that states: ''In order that interested parties may be able to make their concerns known to non-management directors, a company must disclose a method for such parties to communicate directly and confidentially with the presiding director [of the non-management directors] or with non-management directors as a group.'' [43] This method could be analogous to the method in the NYSE listing standards that will be required by Exchange Act Rule 10A–3 regarding audit committees. These standards would require that ''[e]ach audit committee * * * establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.'' [44]

In response to our solicitation of input into the proxy review by the Division of Corporation Finance, representatives of the business community commented that disclosure regarding the means by which security holders may communicate directly with the board of directors would address issues of accountability and responsiveness without extensive disruption or costs.[45] Comments from investors and investor advocacy groups also indicated the view that this disclosure would be helpful; [46] however, these commenters also noted that disclosure alone would not address all issues, as, for example, a process for security holders to communicate with board members would not ensure that board members would be responsive to security holder concerns.[47]

2. Proposed Disclosure Requirements

In making investment decisions, investors may wish to consider the corporate governance practices of companies. Further, disclosure regarding whether a company has a process for security holders to send communications to the board of directors will increase the transparency for security holders of this important aspect of board processes at the companies in which they invest. We have proposed a number of specific and detailed disclosure requirements regarding communications by security holders with the board of directors because we believe that each of these requirements may be necessary in order to give security holders a better understanding of the manner in which security holders can engage in these communications. We request comment on whether each of these detailed requirements is appropriate for that purpose and whether there are additional specific, detailed disclosure requirements that should also be included in these disclosure requirements.

We are proposing that companies include the following information in their proxy materials where action is to be taken with respect to the election of directors:

- A statement as to whether or not the company's board of directors provides a process for security holders to send communications to the board of directors and, if the company does not have a process for security holders to send communications to the board of directors, a statement of the specific basis for the view of the board of directors that it is appropriate for the company not to have such a process;
- If the company has a process for security holders to send communications to the board of directors:
- A description of the manner in which security holders can send such communications to the board;
- Identification of those board members to whom security holders can send communications;
- If all security holder communications are not sent directly to board members, a description of the company's process for determining which communications will be relayed to board members, including disclosure of the department or other group within the company that is responsible for making this determination; and
- A description of any material action taken by the board during the preceding fiscal year as a result of communications from security holders.

We believe that the proposed specific disclosure requirement regarding whether a board has a process by which security holders can communicate with it is necessary to give security holders a better picture of a critical component of the board's interaction with security holders. Specific, detailed disclosure regarding that process, if it exists, is important to security holders in evaluating the nature and quality of the communications process. We believe that information regarding material actions taken by the board as a result of communications with security holders is significant to security holders in evaluating the quality and responsiveness of the communications process. In the absence of these proposed specific disclosure requirements, we believe that disclosure could be at a level of generality that may not be sufficiently helpful to security holders in understanding and evaluating the communications process.

3. Questions Regarding Disclosure of the Ability of Security Holders To Communicate With the Board of Directors

1. Would increased disclosure relating to security holder communications with board members be an effective means to improve board accountability, board responsiveness, and corporate governance policies? Would this disclosure be useful to security holders?

2. If so, do the proposed specific disclosure standards, including those in each of the following areas, provide security holders with important information that provides an understanding of a company's process for communications with the board:

- The existence of such a process;
- A description of the manner in which security holders can communicate with the board;

[41] For example, two pension funds submitted proposals seeking greater security holder access to corporate boards. The AFSCME Employees Pension Plan submitted a security holder proposal to The Kroger Co. to amend Kroger's bylaws to provide for the creation of a security holder committee to communicate with the board regarding security holder proposals under Exchange Act Rule 14a-8 that were approved but not adopted. *The Kroger Co.* (April 11, 2003). In addition, several New York City employee pension funds submitted security holder proposals to Advanced Fibre Communications, Inc. and PeopleSoft, Inc. requesting that these Nasdaq-listed companies establish an ''Office of the Board of Directors'' to facilitate communications between non-management directors and security holders, including meetings, based on the proposed NYSE standard. *Advanced Fibre Communications, Inc.* (March 10, 2003); *PeopleSoft, Inc.* (March 14, 2003).

[42] *See* 2003 Summary of Comments.

[43] Release No. 34–47672 (April 11, 2003).

[44] Exchange Act Rule 10A–3.

[45] *See* 2003 Summary of Comments.

[46] *See id.*

[47] *See id.*

• Identification of board members to whom communications can be sent;

• The process, if any, for determining which communications will be passed on to board members; and

• A description of material actions taken as a result of security holder communications with the board?

3. As noted above, the proposed disclosure standards are intended to provide security holders with specific, detailed information that we believe is important. Are there alternative means to better achieve our objectives? For example, would it be more appropriate to include a broader, less detailed disclosure standard? Would any of the detailed disclosure requirements within the proposed standard result in disclosure that is unnecessarily detailed for the purpose of providing security holders with important information regarding the process of communicating with the board? If so, please describe specifically the basis for that conclusion.

4. Security holders who desire to communicate directly with individual directors, committees, and independent members of boards are often uncertain of the procedures to follow to contact directors. As such, we have proposed requiring disclosure with regard to security holder communications with board members. If no director accepts communications individually, should the company disclose why? Should companies be required to disclose the process they use to record and keep security holder communications?

5. We have proposed requiring disclosure of the means by which companies ''filter'' security holder requests to communicate with board members. Should there be disclosure of the specific person who determines which communications are sent to board members? Should there be disclosure of whether management plays a role in ''filtering'' the security holder communications that are intended for directors?

6. We have proposed requiring disclosure regarding any material actions taken in response to security holder communications. Are there any categories of communications or actions that should be excluded from coverage of the rule? For example, should the rule only apply to formal petitions to the entire board? Should this rule address specifically security holder proposals under Exchange Act Rule 14a–8? For example, should the rule make clear that disclosure is not required with regard to communications relating to proposals under Exchange Act Rule 14a–8? Alternatively, should those communications be included specifically within the disclosure requirement?

7. Do companies currently provide a means for allowing security holders to communicate with board members? If so, how effective have these methods been in improving board accountability, board responsiveness, and corporate governance policies? Is it easier for larger minority security holders to communicate with board members?

8. Because not all companies would be subject to any listing requirements that would allow security holders to communicate with board members, would a disclosure requirement alone be sufficient with regard to companies not subject to those listing requirements?

9. Should communications with board members that are addressed in the disclosure requirements be limited to independent directors or extend to the entire board?

10. We are using the term ''communications'' very broadly to discourage companies from taking a formalistic view as to disclosure regarding which communications are relayed and considered. We do not, however, intend this disclosure standard to require disclosure regarding communications with the board of directors from management of the company, employees of the company, or other agents of the company, where such persons happen also to be security holders. Should we include a specific limitation on the term ''communications'' in this disclosure standard? If so, how do we prevent companies from taking an unduly restrictive view of the term ''communications'' for purposes of this disclosure standard?

11. The proposed rules relating to communications are disclosure standards only and would not require companies to establish procedures for security holders to communicate with directors. Should we nonetheless provide guidance to companies or otherwise address what we would view as appropriate procedures for companies to implement with regard to security holder communications with board members? If so, what procedures would be most appropriate and why? What would be the cost to companies of implementing and maintaining such procedures? How much time would directors and other company personnel be required to expend in implementing and maintaining such procedures? What other unintended burdens or other consequences would fall on directors as a result of such procedures? Could we give useful guidance in this area and, if so, how?

C. Investment Companies

We are proposing to apply the new disclosure requirements regarding board nominating committees and security holders' communications with members of boards to proxy statements of investment companies (''funds'').[48] Funds are currently required to comply with Exchange Act Schedule 14A when soliciting proxies, including proxies relating to the election of directors.[49] Item 22(b)(14)(iv) of Exchange Act Schedule 14A requires funds to disclose the same information about nominating committees that is currently required for operating companies by Item 7(d)(2).[50] As with operating companies, the enhanced disclosure provided by the amendments may benefit fund security holders by improving the transparency of the nominating process and board operations, as well as increasing security holders' understanding of the funds in which they invest.

The proposals would require disclosure as to whether or not the members of a fund's nominating committee are ''interested persons'' of the fund as defined in Section 2(a)(19) of the Investment Company Act,[51] rather than independent under the listing standards of a national securities exchange or national securities association, as in the case of operating companies.[52] We are requiring disclosure with respect to the Section 2(a)(19) test for members of nominating committees for funds because that test is tailored to capture the broad range of affiliations with investment advisers, principal underwriters, and others that are relevant to ''independence'' in the case of funds.

[48] *See* proposed Paragraphs (e) of Item 7 and (b) of Item 22 of Exchange Act Schedule 14A.

[49] *See* Investment Company Act of 1940 Rule 20a–1[17 CFR 270.20a–1] (requiring funds to comply with Regulation 14A [17 CFR 240.14a–1 '' 14a–101]), Schedule 14A, and all other rules and regulations adopted pursuant to Section 14(a) of the Exchange Act [15 U.S.C. 78n] that would be applicable to a proxy solicitation if it were made in respect of a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 78l]).

[50] Funds are subject to Items 7 and 22(b) of Exchange Act Schedule 14A when soliciting proxies regarding the election of directors. Currently, in lieu of the disclosure required by Paragraphs (a)–(d)(2) of Item 7, funds must provide the information required by Item 22(b). *See* Paragraph (e) of Item 7. The Commission's proposals would amend Paragraph (e) of Item 7 to apply the disclosure requirements regarding nominating committees in Paragraph (d)(2) of Item 7 to funds, and would delete the current disclosure requirement regarding nominating committees in Paragraph (b)(14)(iv) of Item 22 as duplicative.

[51] 15 U.S.C 80a–2(a)(19).

[52] Proposed Item 22(b)(14)(ii) of Exchange Act Schedule 14A.

Questions Regarding the Application of the Proposals to Funds

1. Should the proposed amendments that would require disclosure regarding the operations of board nominating committees apply to funds? Should the proposed amendments that would require new disclosure concerning the means by which security holders may communicate with members of boards apply to funds? Are there any aspects of the proposed amendments that should be modified in the case of funds?

2. Should we apply the ''interested person'' standard of Section 2(a)(19) of the Investment Company Act in requiring disclosure regarding the independence of members of a fund's nominating committee? Should we instead apply a different standard to funds, such as the listing standards of national securities exchanges or national securities associations?

D. General Request for Comment

We request and encourage any interested person to submit comments regarding:

- The proposed amendments that are the subject of this release;
- Additional or different changes; or
- Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of companies, investors, and other market participants. With regard to any comments, we note that such comments are of great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments, as well as a discussion of specific alternatives if applicable.

III. Paperwork Reduction Act

A. Background

The proposed amendments to Exchange Act Schedule 14A contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[53] We are submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[54] The titles for the collections of information are:

(1) ''Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15 and Schedule 14A)'' (OMB Control No. 3235–0059);

(2) ''Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)''[55] (OMB Control No. 3235–0057); and

(3) ''Rule 20a–1 under the Investment Company Act of 1940, Solicitations of Proxies, Consents and Authorizations'' (OMB Control No. 3235–0158).[56] The first two titles were adopted pursuant to the Exchange Act and set forth the disclosure requirements for proxy and information statements filed by companies to ensure that investors can make informed voting or investing decisions.[57] The third title was adopted pursuant to the Investment Company Act and concerns the solicitation of proxies, consents and authorizations with respect to securities issued by registered investment companies. The hours and costs associated with preparing, filing, and sending these schedules constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Under the proposals, we would expand the disclosure that is currently required in company proxy or information statements regarding the functions of a company's nominating committee. In addition, the proposals would require disclosure regarding the policies and procedures regarding security holder communications with the board of directors. Compliance with the proposed disclosure requirements would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential.

For purposes of the PRA, we estimate the annual incremental paperwork burden for all companies to prepare the disclosure that would be required under our proposals to be approximately 19,557 hours of company personnel time and a cost of approximately $1,955,000 for the services of outside professionals.[58] That estimate includes the time and the cost of preparing disclosure that has been appropriately reviewed by executive officers, the disclosure committee, in-house counsel, outside counsel, and members of the board of directors.[59] Because the current rules already require a company to collect and disclose information about the composition, functions and policies and procedures of its nominating committee, the proposed disclosure should not impose significant new costs for the collection of information.

We derived the above estimates by estimating the total amount of time it would take a company to prepare and review the proposed disclosure. We estimate that over a three-year time period, the annual incremental disclosure burden would be an average of 3 hours per form. This estimate is based on the assumption that companies spend a greater amount of time preparing the disclosure in year one and will become more efficient in preparing the disclosure over the next two years.[60] This estimate represents the average burden for all companies, both large and small, that are subject to the proxy rules. We expect that the disclosure burden could be greater for larger companies and lower for smaller companies. The estimate also has been adjusted to reflect the fact that not all proxy and information statements involve action to be taken with respect to the election of directors, and therefore would not require companies to provide the proposed disclosure.[61]

[53] 44 U.S.C. 3501 *et seq.*

[54] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[55] Exchange Act Schedule 14C requires disclosure of some items of Exchange Act Schedule 14A. Therefore, while we are not proposing to amend the text of Exchange Act Schedule 14C, the proposed amendments to Exchange Act Schedule 14A must also be reflected in the PRA burdens for Exchange Act Schedule 14C.

[56] Investment Company Act Rule 20a–1 requires registered investment companies to comply with Exchange Act Regulation 14A or 14C, as applicable. Therefore, the annual responses to Investment Company Act Rule 20a–1 reflect the number of proxy and information statements that are filed by registered investment companies.

[57] The proxy rules apply only to domestic companies with equity securities registered under Section 12 of the Exchange Act and to investment companies registered under the Investment Company Act [15 U.S.C. 80a *et seq.*]. There is a discrepancy between the number of annual reports by reporting companies and the number of proxy and information statements filed with the Commission in any given year. This is because some companies are subject to reporting requirements by virtue of Section 15(d) of the Exchange Act [15 U.S.C. 78o], and therefore are not covered by the proxy rules. In addition, companies that are not listed on a national securities exchange or Nasdaq may not hold annual meetings and therefore would not be required to file a proxy or information statement.

[58] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number.

[59] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures.

[60] We estimate that it will take 6 hours to prepare the disclosure in year one, 3.13 hours in year two, and 2.03 hours in year three.

[61] We estimate that 20% of all proxy and information statements do not include disclosure about directors. This estimate is based on the proportion of preliminary proxy statements to definitive proxy statements filed in our 2002 fiscal year (2,555/8,639=30%), which has been adjusted downward by 10% to reflect the fact that some preliminary proxy statements contain disclosure about directors. Registrants do not file preliminary proxy statements for security holder meetings where the matters to be acted upon involve only the

Continued

B. Revisions to PRA Reporting and Cost Burden Estimates

Table 1 below illustrates the incremental annual compliance burden of the collection of information in hours and in cost for proxy and information statements under the Exchange Act and Investment Company Act. The burden was calculated by multiplying the estimated number of responses by the estimated average number of hours each entity spends completing the form. We have based our estimated number of annual responses on the actual number of filers during the 2002 fiscal year. We estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

TABLE 1.—CALCULATION OF INCREMENTAL PRA BURDEN ESTIMATES

	Annual responses	Incremental hours/form	Incremental burden	75 percent company	25 percent professional	$300 Prof. cost
	(A)	(B)	(C) = (A) × (B)	(D) = (C) × 0.75	(E) = (C) × 0.25	(F) = (E) × $300
SCH 14A	7,188	3.00	21,564.00	16,173	5,391.00	$1,617,300.00
SCH 14C	446	3.00	1,338.00	1,004	334.50	$100,350.00
Rule 20a–1	1,058	3.00	3,174.00	2,381	793.50	$238,050.00
Total	8,692			19,557		$1,955,700.00

C. Solicitation of Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of our estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–14–03. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–14–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

IV. Cost-Benefit Analysis

A. Background

On April 14, 2003, the Commission directed the Division of Corporation Finance to formulate possible changes in the proxy rules and regulations regarding procedures for the election of directors [62] and on May 1, 2003, the Commission solicited public views on that undertaking.[63] Submissions from the public on this matter identified two particular areas of concern: the process for nominating candidates for election as directors and the ability of security holders to communicate effectively with the board of directors. After considering all of the comments on this matter, the Commission is proposing to expand disclosure in company proxy statements regarding the nominating committees of boards of directors and communications between security holders and directors.

Currently, companies must state whether or not they have a nominating committee and, if so, must identify the members of the nominating committee, state the number of committee meetings held, and briefly describe the functions performed by such committees.[64] In addition, if a company has a nominating or similar committee, it must state whether the committee considers nominees recommended by security holders and, if so, must describe how security holders may submit recommended nominees.[65] However, having reviewed the existing proxy rules and submissions from public commenters, we believe reforms may be necessary to improve the current disclosure regime. The proposed disclosures are designed to build upon existing disclosure requirements to elicit a more detailed discussion of the policies and procedures of the nominating committee as well as the means by which security holders can communicate with the board of directors.

The intent of the proposed disclosure requirements is to enhance transparency of the policies of boards of directors, with the goal of providing security holders a better understanding of the functions and activities of the boards of the companies in which they invest. For example, the proposal relating to nominating committees would require disclosure about the source of director candidates and the level of scrutiny applied to each candidate. The proposal relating to security holder communications with directors seeks to strengthen the association among security holders and directors. For example, the proposed disclosure would inform security holders of the manner in which to send communications to the board. Moreover, the proposals aim to enable investors to better evaluate a company's responsiveness to security holder issues and inquiries by illuminating the degree of director involvement with security holder concerns.

The Commission has considered a variety of reforms to achieve its

election of directors or other specified matters. *See* Exchange Act Rule 14a–6 [17 CFR 240.14a–6].

[62] *See* Press Release No. 2003–46 (April 14, 2003).

[63] *See* Release No. 34–47778 (May 1, 2003) [68 FR 24530].

[64] *See* Paragraph (d)(1) of Item 7 of Exchange Act Schedule 14A.

[65] *See id.* at Paragraph (d)(2).

regulatory objectives. As one possible approach, we considered requiring companies to include the security holder's proxy card in the company mailing. Alternatively, we considered amending or reinterpreting Exchange Act Rule 14a–8(i)(8)[66] to allow security holder proposals requesting access to the corporation's proxy card for the purpose of making nominations. As an initial step in our efforts to reform the rules and regulations regarding security holder oversight of the companies in which they invest, the current proposals take a more measured approach by building on existing disclosure requirements.

B. Benefits

The proposed rules would benefit security holders because they will assist security holders in better understanding their rights of ownership by focusing attention on the scope and efficacy of the policies and procedures that companies maintain to nominate directors and to enable security holders to communicate with directors. The more precise disclosure requirements in the proposals will promote more consistent disclosure among a cross-section of public companies because they will have greater certainty as to the required disclosure. In addition, increasing the amount and quality of information available to investors concerning board policies and procedures may improve investor confidence because investors may be able to identify the degree to which companies are responsive to security holder concerns. By providing greater transparency of board policies, we anticipate that the proposals would allow investors to make more informed choices when deciding how to invest.

To the extent that security holders would rather invest in companies with boards that maintain policies and procedures that provide greater security holder oversight, companies may have incentives to adopt more meaningful policies and procedures regarding director nominations and security holder communications. The proposed rules also may encourage companies to consider their existing policies in relation to policies adopted by other companies and could facilitate competition among companies to adopt policies that reduce costs to security holders. For example, if security holder board nominees are given adequate consideration through the nominating process, a security holder may choose to submit its candidate to the nominating committee rather than incur the expense of soliciting proxies to support the nominee. Moreover, the proposed disclosure of the manner in which security holders can send communications to the board may encourage a less costly communication process for providing recommendations to the board than the current process embodied in Exchange Act Rule 14a–8.

Request for Comment

- We solicit quantitative data to assist our assessment of the benefits of increased disclosure regarding nominating committees and security holder-director communications.
- Are there any public companies that currently provide information to the public regarding their policies and procedures related to the functioning of the nominating committee or security holder communications with directors? If so, is there any data on whether investors find this information to be useful?

C. Costs

The proposed rules would impose new disclosure requirements on companies subject to the proxy rules.[67] We estimate that complying with the proposed disclosures would entail a relatively small financial burden. The proposed disclosures are designed to build upon existing disclosure requirements to elicit a more detailed discussion of the functions of the nominating committee as well as the means by which security holders can communicate with the board of directors. Thus, the task of complying with the proposed disclosure could be performed by the same person or group of persons responsible for compliance under the current rules. Because the current rules already require a company to collect and disclose information about the composition, functions and policies and procedures of its nominating committee, the proposed disclosure should not impose significant new costs for the collection of information.

For purposes of the PRA, we estimate the annual incremental paperwork burden for all companies to prepare the disclosure that would be required under our proposals to be approximately 19,557 hours of company personnel time (2.25 hours per company),[68] which translates into an estimated cost of $1,662,000 ($191 per company).[69] We also estimate a cost of approximately $1,955,000 for the services of outside professionals ($225 per company).[70] The figures above include the estimated burdens for investment companies. For investment companies, we estimate the incremental burden to be 2,381 hours of company personnel time (2.25 hours per company), which translates into an estimated cost of $202,385 ($191 per company). We also estimate a cost for investment companies of approximately $238,050 for the services of outside professionals ($225 per company). To the extent that the proposals influence corporate behavior, however, the costs would extend beyond a disclosure burden. For example, companies may incur additional costs in instituting more responsive policies and procedures regarding director nominations and security holder communications. We have not included these costs in our analysis of the additional disclosure requirement, but have sought comment regarding such costs and related matters.

Request for Comment

- What are the direct and indirect costs associated with the proposed rules?
- What are the costs in the first year of compliance versus subsequent years?
- To the extent that the proposals influence corporate behavior, what costs would a company incur to institute responsive policies and procedures regarding director nominations and security holder communications?
- We solicit quantitative data to assist our assessment of the costs associated with increased disclosure regarding nominating committees and security holder-director communications.

D. Small Business Issuers

Although the proposed rules apply to small business issuers, we do not anticipate any disproportionate impact on small business issuers. Like other issuers, small business issuers should incur relatively minor compliance costs, and should find it unnecessary to hire extra personnel. The issues of corporate accountability and security holder rights affect small companies as much as they affect large companies. Thus, we do not

[66] Exchange Act Rule 14a–8(i)(8) permits a company to exclude a security holder proposal from its proxy statement if the proposal "relates to an election for membership on the company's board of directors or analogous governing body."

[67] The proxy rules apply only to domestic companies with equity securities registered under Section 12 of the Exchange Act and to investment companies registered under the Investment Company Act.

[68] 3 hours × 75% = 2.25 hours.

[69] We estimate the average hourly cost of in-house personnel to be $85. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (Oct. 2001).

[70] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures.

believe that applying the proposed rules to small business issuers would be inconsistent with the policies underlying the small business issuer disclosure system.

E. Request for Comments

To assist the Commission in its evaluation of the costs and benefits of the proposed disclosure discussed in this release, we request that commenters provide views and data relating to any costs and benefits associated with the proposed rules.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [71] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rules are intended to make information about the functions of a company's nominating committee of the board of directors, as well as the ability of security holders to communicate with the board of directors, more transparent to investors. We anticipate that the proposed rules would provide increased information upon which to evaluate the functioning of boards of directors and make investment decisions. The proposed rules may affect competition because they would allow companies to consider their existing policies in relation to policies adopted by other companies. As a result, companies may compete to adopt policies that effectively balance security holder and director interests and therefore attract investors.

We have identified one possible area where the proposed rules could potentially place a burden on competition. The proposed disclosure would enable investors to compare companies' policies and procedures for director nominations and communications with directors. To the extent that investors would place a premium on a company that provides security holders with favorable director nomination and communication procedures, a company would be at a disadvantage to other companies who maintain more favorable procedures. We request comment regarding the degree to which our proposed disclosure requirements would create competitively harmful effects upon public companies, and how to minimize those effects. We also request comment on any disproportionate cross-sectional burdens among the firms affected by our proposals that could have anti-competitive effects.

Section 3(f) of the Exchange Act [72] and Section 2(c) of the Investment Company Act [73] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. We believe the proposed disclosure will make information about the operation of a company's director nomination process more transparent. In addition, disclosure regarding the means by which security holders may communicate directly with a company's board of directors may increase security holder involvement in the companies in which they invest. As a result, we believe that investors may be able to evaluate a company's board of directors more effectively and make more informed investment decisions. We believe that as a consequence of these developments, there may be some positive impact on the efficiency of markets and capital formation. The possibility of these effects, their magnitude if they were to occur, and the extent to which they would be offset by the costs of the proposals are difficult to quantify. We request comment on these matters and how the proposed amendments, if adopted, would affect efficiency and capital formation. Commenters are requested to provide empirical data and other factual support to the extent possible.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to Items 7 and 22 of Exchange Act Schedule 14A. Under the proposals, we would expand the disclosure that currently is required in company proxy or information statements regarding the functions of a company's nominating committee. In addition, the proposals would require disclosure regarding the policies and procedures regarding security holder communications with the board of directors.

A. Reasons for the Proposed Action

On April 14, 2003, the Commission directed the Division of Corporation Finance to formulate possible changes in the proxy rules and regulations regarding procedures for the election of directors [74] and on May 1, 2003, the Commission solicited public views on that undertaking.[75] Submissions from the public on this matter identified two particular areas of concern: the process for nominating candidates for election as directors and the ability of security holders to communicate effectively with the board of directors. After considering all of the comments on this matter, the Commission is proposing to expand disclosure in company proxy statements regarding the nominating committees of boards of directors and communications between security holders and directors.

Currently, companies must state whether or not they have a nominating committee and, if so, must identify the members of the nominating committee, state the number of committee meetings held, and briefly describe the functions performed by such committees.[76] In addition, if a company has a nominating or similar committee, it must state whether the committee considers nominees recommended by security holders and, if so, must describe how security holders may submit recommended nominees.[77] The proposed disclosures are designed to build upon existing disclosure requirements to elicit a more detailed discussion of the policies and procedures of the nominating committee as well as the means by which security holders can communicate with the board of directors.

B. Objectives

The proposed disclosure requirements are designed to enhance transparency of the policies of boards of directors, with the goal of providing security holders a better understanding of the functions and activities of the boards of the companies in which they invest. For example, the proposal relating to nominating committees would require disclosure about the source of director candidates and the level of scrutiny accorded to each candidate. The proposal relating to security holder communications with directors seeks to strengthen the association among security holders and directors. For example, the proposed disclosure would inform security holders of the manner in

[71] 15 U.S.C. 78w(a)(2).

[72] 15 U.S.C. 78c(f).

[73] 15 U.S.C. 80a–2(c).

[74] *See* Press Release No. 2003–46 (April 14, 2003).

[75] *See* Release No. 34–47778 (May 1, 2003).

[76] *See* Paragraph (d)(1) of Item 7 of Exchange Act Schedule 14A.

[77] *See id.* at Paragraph (d)(2).

which to send communications to the board. Moreover, the proposals aim to enable investors to better evaluate a company's responsiveness to security holder issues and inquiries by illuminating the degree of director involvement with security holder concerns. The proposed disclosure requirements enhance transparency of the policies of boards of directors, with the goal of giving security holders a better understanding of the functions and activities of the boards of the companies in which they invest.

C. Legal Basis

We are proposing the amendments under the authority set forth in Sections 3(b), 12, 14, 23(a) and 36 of the Securities Exchange Act of 1934, as amended, and Sections 20(a) and 38 of the Investment Company Act of 1940, as amended.

D. Small Entities Subject to the Proposed Amendments

The proposed amendments would affect companies that are small entities. Exchange Act Rule 0–10(a)[78] defines a company, other than an investment company, to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. An investment company is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[79] As discussed below, we believe that the proposals would affect approximately 575, or 23%, of the small entities that are operating companies. We believe that the proposals also would affect approximately 50 of the small entities that are investment companies.

The Commission received 8,692 separate proxy and information statements in its 2002 fiscal year. We estimate that 6,536, or 80%, of those filings involved the election of directors, and would therefore be affected by the proposals.[80] Furthermore, we estimate that 5,257 companies are ''listed issuers'' (as defined in Exchange Act Rule 10A–3) that are subject to the proxy rules.[81] Because the relevant listing standards of national securities exchanges and the Nasdaq require that listed issuers hold annual meetings, and state law provides for the election of directors at annual meetings, we estimate that at least 5,257 proxy and information statements involve elections of directors,[82] of which less than 225 operating companies and less than 25 investment companies constitute ''small entities.''[83] Therefore, we deduced that 1,029 proxy and information statements relate to the election of directors for companies that are not ''listed issuers.''[84] We estimate that approximately 352 of the proxy and information statements for operating companies that are not ''listed issuers'' would be filed by small entities affected by the proposed rules.[85] We also estimate that approximately 25 of the proxy and information statements for investment companies that are not ''listed issuers'' would be filed by small entities affected by the proposals. Therefore, we estimate that the proposals would, in total, affect approximately 625 small entities.[86]

We request comment on the number of small entities that would not be impacted by our proposals, including any available empirical data.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposals are expected to result in minimal additional costs to all subject companies, large or small. Because the current rules already require a company to collect and disclose information about the composition, functions and policies and procedures of its nominating committee, the proposed disclosure should not impose significant new costs for the collection of information. Thus, the task of complying with the proposed nominating committee disclosure could be performed by the same person or group of persons responsible for compliance under the current rules at a minimal incremental cost. Moreover, if a small entity were to maintain a process for security holders to send communications to its board of directors, company personnel would be aware of such procedures and the disclosure burden would also be minimal. If a small entity does not maintain such a process, then the proposed disclosure would consist of a statement that the board does not have a communications process and the company would state the specific basis for the view of the board of directors that it is appropriate for the registrant not to have such a communications process. To the extent that the proposals influence corporate behavior, however, the costs would extend beyond a disclosure burden. For example, companies may incur additional costs in instituting more responsive policies and procedures regarding director nominations and security holder communications. The proposals, however, would not mandate any specific procedures.

For purposes of the PRA, we estimated that it will take an average of 3 hours per year for companies, large and small, to comply with the proposed disclosure. We estimated that 75% of the compliance burden would be carried by the company internally and that 25% of the compliance burden would be carried by outside professionals retained by the company. Thus, we estimated the annual incremental paperwork burden for a company subject to the proxy rules would be 2.25 hours per company, which translates into an estimated cost of $191 per company,[87] and a cost of approximately $225 per company for the services of outside professionals.[88]

A cost of $416 per small entity may not, however, constitute a significant economic impact. That conclusion is based on our analysis of 1,245 small entities available on the Compustat database. We found that the average revenue of those small entities is $2.07 million per company. Therefore, on

[78] 17 CFR 240.0–10(a).

[79] 17 CFR 270.0–10(a)

[80] We estimate that 20% of all proxy and information statements do not include disclosure about directors. This estimate is based on the proportion of preliminary proxy statements to definitive proxy statements filed in our 2002 fiscal year (2,555/8,639=30%), which has been adjusted downward by 10% to reflect the fact that some preliminary proxy statements contain disclosure about directors. Registrants do not file preliminary proxy statements for security holder meetings where the matters to be acted upon involve only the election of directors or other specified matters. *See* Exchange Act Rule 14a–6.

[81] We derived this estimate from the database provided by the Center for Research in Securities Prices at the University of Chicago (''CRSP''), the Standard & Poors Research Insight Compustat Database (''Compustat'') and SEC Form 1392.

[82] *See, e.g.,* Rule 302.00 of NYSE listing standards and Rule 4350(e) of Nasdaq listing standards.

[83] Data obtained from Compustat indicates that there are less than 225 listed operating companies that are small entities. Information compiled by the Commission staff indicates that there are less than 25 listed investment companies that are small entities.

[84] 6,536–5,257–225–25=1,029.

[85] This estimate is based on the proportion of small entities that are reporting companies (2,500) to the total domestic companies quoted on the OTCBB or the Pink Sheets (7,317). We derived the latter figure from the CRSP database.

[86] The calculation for the total number of small entities is as follows: 225 listed operating companies + 25 listed investment companies + 352 non-listed operating companies + 25 non-listed investment companies = 627.

[87] We estimate the average hourly cost of in-house personnel to be $85. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (Oct. 2001).

[88] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures.

average, the estimated $416 compliance expense would constitute approximately .02% of a small entity's revenues. We encourage written comments regarding this analysis. We solicit comments as to whether the proposed changes could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or completely duplicate the proposed rules. There is a partial overlap with current disclosure requirements about nominating committees in proxy and information statements. This overlap is necessary because the proposed disclosures are designed to build upon existing disclosure requirements to elicit a more detailed discussion. The current requirements do not include much of the information specifically targeted for inclusion in the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

(a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of disclosure for small entities;

(c) The use of performance rather than design standards; and

(d) An exemption for small entities from coverage under the proposals.

The Commission has considered a variety of reforms to achieve its regulatory objectives. As one possible approach, we considered requiring companies to include the security holder's proxy card in the company mailing. Alternatively, we considered amending or reinterpreting Exchange Act Rule 14a-8(i)(8) to allow security holder proposals requesting access to the corporation's proxy card for the purpose of making nominations. We believe that the current proposals are the most cost-effective initial approach to address specific concerns related to small entities because the proposals build on existing disclosure requirements.

We have drafted the proposed disclosure rules to require clear and straightforward disclosure of a company's policies and procedures regarding the nomination of directors and security holder communications. Separate disclosure requirements for small entities would not yield the disclosure that we believe to be necessary to achieve our objectives. In addition, the informational needs of investors in small entities are typically as great as the needs of investors in larger companies. Therefore, it does not seem appropriate to develop separate requirements for small entities involving clarification, consolidation or simplification of the proposed disclosure.

We have used design rather than performance standards in connection with the proposals for two reasons. First, based on our past experience, we believe the proposed disclosure would be more useful to investors if there were enumerated informational requirements. The proposed mandated disclosures may be likely to result in a more focused and comprehensive discussion. Second, more precise disclosure requirements in the proposals will promote more consistent disclosure among a cross-section of public companies because they will have greater certainty as to the required disclosure. In addition, more precise disclosure requirements would improve the Commission's ability to enforce the proposed rules. Therefore, adding to the disclosure requirements in existing proxy and information statements appears to be the most effective method of eliciting the disclosure.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entities that may be affected by the proposals; (ii) the existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and (iii) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, or in the alternative, a certification under Section 605(b) of the Regulatory Flexibility Act, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[89] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on: (a) The potential effect on the U.S. economy on an annual basis; (b) any potential increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation.

VIII. Statutory Basis and Text of Proposed Amendments

The proposed amendments to Items 7 and 22 of Schedule 14A are being proposed pursuant to Sections 3(b), 12, 14, 23(a) and 36 of the Securities Exchange Act of 1934, as amended, and Sections 20(a) and 38 of the Investment Company Act of 1940, as amended.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATION, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend § 240.14a–101 by:

a. Revising paragraph (d)(2) of Item 7;

b. Revising the reference ''paragraphs (a) through (d)(2)'' in paragraph (e) of Item 7 to read ''paragraphs (a) through (d)(1) and (d)(2)(ii)(D)'';

c. Adding paragraph (h) to Item 7;

[89] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

d. Revising the reference ''paragraphs (d)(3), (f), and (g)'' in the introductory text of paragraph (b) of Item 22 to read ''paragraphs (d)(2), (d)(3), (f), (g), and (h)'';

e. Revising the last sentence of the introductory text of paragraph (b)(14) of Item 22;

f. Revising paragraph (b)(14)(ii) of Item 22;

g. Removing the semi-colon and ''and'' from the end of paragraph (b)(14)(iii) of Item 22 and in their place adding a period;

h. Removing paragraph (b)(14)(iv) of Item 22; and

i. Adding an Instruction directly after paragraph (b)(14)(iii) of Item 22.

The additions and revisions read as follows.

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

* * * * *

Item 7. Directors and executive officers.

* * * * *

(d)(1) * * *

(2)(i) If the registrant does not have a standing nominating committee or committee performing similar functions, state the specific basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of director nominees;

(ii) Provide the following information regarding the registrant's director nomination process:

(A) If the nominating committee has a charter, describe the material terms of the nominating committee charter and disclose where a current copy of the charter is available, which can be the registrant's Web site;

(B) If the nominating committee does not have a charter, state that fact;

(C) If the registrant is a listed issuer (as defined in § 240.10A–3), whose securities are listed on a national securities exchange registered pursuant to Section 6(a) of the Exchange Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to Section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that has independence requirements for nominating committee members, disclose any instance during the last fiscal year where any member of the nominating committee did not satisfy the definition of independence in the applicable listing standards;

(D) If the registrant is not a listed issuer (as defined in § 240.10A–3), disclose whether each of the members of the nominating committee are independent. In determining whether a member is independent, the registrant must use a definition of independence of a national securities exchange registered pursuant to Section 6(a) of the Exchange Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to Section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as that definition may be modified or supplemented), and state which definition it used. Whatever definition the company chooses, it must apply that definition consistently to all members of the nominating committee and use the independence standards of the same national securities exchange or national securities association for purposes of nominating committee disclosure under this requirement and audit committee disclosure required under § 240.10A–3;

(E) If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, provide a description of the material elements of that policy, which shall include, but not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;

(F) If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, a statement of that fact;

(G) If the nominating committee will consider candidates recommended by security holders, describe the procedures to be followed by security holders in submitting such recommendations;

(H) Describe any specific, minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the registrant's board of directors, describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the registrant's directors to possess, and describe any specific standards for the overall structure and composition of the registrant's board of directors;

(I) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether or not the nominee is recommended by a security holder;

(J) State the specific source, such as the name of an executive officer, director, or other individual, of each nominee (other than nominees who are executive officers or directors standing for re-election) approved by the nominating committee for inclusion on the registrant's proxy card;

(K) If the registrant pays a fee to any third party or parties to identify or assist in identifying or evaluating potential nominees, disclose the function performed by each such third party; and

(L) If the registrant's nominating committee receives a recommended nominee from a security holder who beneficially owned greater than 3% of the registrant's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders who beneficially owned, in the aggregate, greater than 3% of the registrant's voting common stock, with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made, and if the nominating committee chooses not to nominate that candidate:

(*1*) State the name or names of the security holders who recommended the candidate; and

(*2*) State the specific reasons for the nominating committee's determination not to include the candidate as a nominee.

Instructions to paragraph (d)(2):

1. For purposes of Item 7(d)(2)(ii), the term ''nominating committee'' refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

2. For purposes of Item 7(d)(2)(ii)(L), the registrant need not identify the recommended candidate.

3. For purposes of Item 7(d)(2)(ii)(L), the percentage of securities held by a nominating security holder, as well as the holding period of those securities, may be determined by the registrant if the security holder is the registered holder of the securities. If the security holder is not the registered owner of the securities, he or she can submit one of the following to the registrant to evidence the required ownership percentage and holding period:

A. A written statement from the ''record'' holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

B. If the security holder has filed a Schedule 13D (§ 240.13d–101),

Schedule 13G (§ 240.13d–102), Form 3 (§ 249.103), Form 4 (§ 249.104), and/or Form 5 (§ 249.105), or amendments to those documents or updated forms, reflecting ownership of the shares as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the securities for the one-year period as of the date of the recommendation.

* * * * *

(h)(1) State whether or not the registrant's board of directors provides a process for security holders to send communications to the board of directors and, if the registrant does not have such a process for security holders to send communications to the board of directors, state the specific basis for the view of the board of directors that it is appropriate for the registrant not to have such a process.

(2) If the registrant has a process for security holders to send communications to the board of directors:

(i) Describe the manner in which security holders can send communications to the board;

(ii) Identify those board members to whom security holders can send communications;

(iii) If all security holder communications are not sent directly to board members, describe the registrant's process for determining which communications will be relayed to board members, including identification of the department or other group within the registrant that is responsible for making this determination; and

(iv) Describe any material action taken by the board of directors during the preceding fiscal year as a result of communications from security holders.

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(b) * * *

(14) * * * Identify the other standing committees of the Fund's board of directors, and provide the following information about each committee, including any separately designated audit committee and any nominating committee:

* * * * *

(ii) The members of the committee and, in the case of a nominating committee, whether or not the members of the committee are ''interested persons'' of the Fund as defined in Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)); and

* * * * *

Instruction to paragraph (b)(14): For purposes of Item 22(b)(14), the term ''nominating committee'' refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

* * * * *

Dated: August 8, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20609 Filed 8–13–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Thursday,
August 14, 2003

Part IV

Department of Education

National Institute on Disability and Rehabalitation Research; Office of Special Education and Rehabilitative Services; Research—Assistive Technology Act Technical Assistance Program; Inviting Applications for Fiscal Year (FY) 2003; Notices

DEPARTMENT OF EDUCATION

[RIN 1820 ZA31]

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for one new award under the Assistive Technology Act of 1998 (AT Act) Technical Assistance Program (TA) for the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and later years. We take this action to focus attention on an area of national need. We intend this priority to measure and improve the outcomes of the AT State grant program that serves individuals with disabilities.

DATES: We must receive your comments on or before September 15, 2003.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov*.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in Room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2) (ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

Assistive Technology Act

The AT Act reaffirmed the Federal role of promoting access to AT devices and services for individuals with disabilities. In 1988, Congress passed the original Technology Related Assistance for Individuals with Disabilities Act (Tech Act) to assist States to identify and respond to the AT needs of individuals with disabilities. Reauthorized in 1994, the Tech Act was premised on the assumption that individuals with disabilities needed access to AT devices and services, and that Federal funds could function as a catalyst and as leverage to create permanent systemic change within State infrastructures that did, could, or should make AT devices and services more readily available to individuals with disabilities.

In addition to continuing the AT State grant program and TA activities conducted under the earlier Tech Act, the 1994 Tech Act amendments required each State grant to set aside funds for the Protection and Advocacy (P&A) system in each State to assist individuals with disabilities access AT devices and services. The amendments also included standards of accountability to ensure that States would meet the Tech Act goals within the ten-year funding period.

The Tech Act was replaced in 1998 with the AT Act, which authorized an additional three years of funding for the States. The AT Act was passed in recognition of the technology challenges that remain for individuals with disabilities. AT State grant programs have met some of these challenges, documented continuing needs and reported the outcomes of their efforts through the implementation of a web-based data collection system.

Priority

Background

The purpose of the AT Act Data Collection Project is to regularly collect data from the 56 AT State grant program grantees and 56 P&A systems that will provide information about access to and provision of AT devices and service. The analyses of this data can be used to identify outcomes, infer trends and impacts, identify effective and replicable strategies, and support the formulation of new policies and practices.

In 1999, the Secretary established a Data Collection Project for a 48-month period for the purpose of collecting annual data from the AT State grant program grantees that would provide evidence-based, measurable results for individuals with disabilities and

generate policy-relevant information for Federal, State and local decision-makers about the availability, use and purchase of AT devices and services as well as identify exemplary practices for improving access to AT services and devices.

On-going analyses of data will provide for program development and inform planning activities. The AT Act received funding in the FY 2003 budget to support operation through FY 2004. This Data Collection Project will be funded for 12 months to capture the grantees' activities during that period.

Goals

The short-term goal of this proposed priority is to maintain and support the existing Web-based data collection instrument for AT Act State grantees and to develop and implement a new web-based data collection instrument for the AT Act P&A grantees. The long-term goal of this proposed priority is to evaluate the performance of the AT Act grantees' and to measure the outcomes and impacts of their activities. Performance indicators will be used to measure outcomes including the extent to which grantees achieve the following short-term and long-term goals: (1) Increase access to and dissemination of information about AT; (2) increase outreach to underserved groups; (3) increase technical assistance and training for consumers and service providers; (4) increase interagency coordination; and (5) the impact of activities on individuals with disabilities including improved access to and capacity to live independently in the community, participate in educational environments, and obtain and maintain employment.

Proposed Priority

The Assistant Secretary proposes a Data Collection Technical Assistance Project. The purpose of the project is to maintain and support the existing Web-based data collection instrument for the AT Act State grantees and to develop, implement, test, support and maintain a Web-based data collection instrument for the AT Act P&A grantees. The Data Collection Technical Assistance Project must:

(a) Maintain and support the existing Web-based data collection instrument for the AT Act State grantees and develop, implement, test, support and maintain a Web-based data collection and analysis system, including a data collection instrument for the AT Act P&A grantees to assess performance, outcomes;

(b) Train entities funded under the AT Act in the use of the data collection systems including specific training on the data collection instruments;

(c) Generate analytical reports based on the data collected from the grantees and prepare an annual report on grantees' performance and outcomes, including interpretations of findings;

(d) Identify and evaluate successful strategies that can be linked to increased access to and provision of AT based on the data collected from the grantees, including analyses of use of AT by individuals with disabilities and national trends related to AT use by individuals with disabilities;

(e) Coordinate information dissemination activities and distribute information about access to and provision of AT for individuals with disabilities of all ages to the AT Act State grantees, AT Act P&A grantees, grantees providing TA to the AT Act State grantees and P&A grantees, and the National AT Internet Site; and

(f) Prepare and submit an annual report of findings about program outcomes, and separately prepare a report on assessment of the reliability of the data collection measures and validity of data collected from the AT Act grantees and P&A grantees, and the extent to which the data addresses the intended purposes of the data collection activities.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of Potential Costs and Benefits

The potential cost associated with this proposed priority is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Data Collection Project have been well established over the years in that similar projects have been completed. This proposed priority will generate new knowledge through a dissemination, utilization, training, and technical assistance project.

The benefit of this proposed priority and proposed applications and project requirements will be the establishment of a new Data Collection Technical Assistance Project that generates, disseminates, and promotes the use of new information that will improve access to AT and expand opportunities for employment, education and community life.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.224B, Assistive Technology Act Technical Assistance Program)

Program Authority: 29 U.S.C. 3014

Dated: August 11, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–20793 Filed 8–13–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.224B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Assistive Technology Act Technical Assistance Program; Notice Inviting Applications for Fiscal Year (FY) 2003

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of Program: The purpose of the Assistive Technology (AT) Act Data Collection Project is to provide technical assistance (TA) to the Assistive Technology (AT) Act State Grant Program Grantees and to the Protection and Advocacy Grantees (P&A). The authority for the Secretary to fund TA projects is contained in section 104 of the Assistive Technology Act of 1998 (AT Act).

For FY 2003 the competition for a new award focuses on a project designed to meet the priority we describe in the *Priority* section of this application notice. We intend this priority to improve data collection activities of the State AT projects and the P&A projects funded under the AT Act that serve individuals with disabilities.

In order to provide applicants with a 30-day application period and to ensure that this grant is awarded before the end of FY 2003, NIDRR is inviting applications based on the proposed priority. NIDRR will publish the final priority after the comment period closes.

Depending upon the comments that NIDRR receives, the final priority may include revisions to the proposed priority. It is generally the policy of the Department not to solicit applications before the publication of a final priority. However, in this case, it is essential to solicit applications on the basis of the proposed priority in order to allow applicants sufficient time to prepare applications of appropriate quality to be funded. Applicants are advised to begin to develop their applications based on the proposed priority. If changes are made in the final priority, applicants will be given an opportunity to revise or resubmit their applications.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public, or private agencies, including for-profit agencies.

Applications Available: August 14, 2003.

Deadline for Transmittal of Applications: September 15, 2003.

Estimated Available Funds: $428,000.

Maximum Award: $428,000 for year 1 and $300,000 each year for years 2 and 3.

Note: We will reject without consideration or evaluation any application that proposes a budget exceeding the stated maximum award amount in any year (See 34 CFR 75.104(b)).

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: EDGAR, 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86 and 97.

Priority

This competition focuses on a project designed to meet the priority in the notice of proposed priority for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Selection Criteria

We use the following selection criteria from 34 CFR 75.210 to evaluate applications under this program.

The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Significance* (8 points total).

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies (8 points).

(b) *Quality of the project design* (35 points total).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (12 points).

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (10 points).

(iii) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition (8 points).

(iv) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources (5 points).

(c) *Quality of project services* (16 points total).

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (5 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services (5 points).

(ii) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources (6 points).

(d) *Quality of project personnel* (12 points total).

(1) The Secretary considers the quality of the personnel who will carry out the project.

(2) In determining the quality of proposed project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (3 points).

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator (5 points).

(ii) The qualifications, including relevant training and experience, of key project personnel (4 points).

(e) *Adequacy of resources* (6 points total).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization (3 points).

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (3 points).

(f) *Quality of the management plan* (11 points total).

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed

project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timeliness, and milestones for accomplishing project tasks (6 points).

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (5 points).

(g) *Quality of the project evaluation* (12 points total).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project (6 points).

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (6 points).

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Assistive Technology Act Data Collection Project—CFDA #84.224B is one of the programs included in the pilot project. If you are an applicant under this project, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data online while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the 84.224B competition and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2) (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC, time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the 84.224B competition at: *http://e-grants.ed.gov.*

Parity Instructions

Users of e-Application, a data driven system, will be entering data online while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project continues the Department's transition to an electronic grant award process. In addition to e-Application, the Department plans to expand the number of discretionary programs using the electronic peer review (e-Reader) system and to increase the participation of discretionary programs offering grantees the use of the electronic annual performance reporting (e-Reports) system.

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

- Submit your application on 8.5″ by 11″ paper.
- Leave a 1-inch margin on all sides.
- Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.
- Please use black and white, also, for illustrations, including charts, tables, graphs and pictures.
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if

included, does not count against any page limitation.

• Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.

Additional Application Procedures

Appendices: Do not attach any appendices if all of your appendices are not in electronic format. Type in the appendices section: ''Appendices are being sent separately.'' and note the date that they are hand delivered or mailed. Put the PR/award number and the word ''Appendices'' in the upper right hand corner of each page of the appendices. Send the entire package of appendices to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.224B)–Appendices, 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must clearly label the outside of the envelope with the PR/Award Number and the word ''Appendices.'' You must submit all hard copy appendices according to the *Instructions for Transmitting Applications* found elsewhere in this notice.

Instructions for Transmitting Applications

If you want to apply for a grant in paper format and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail.*

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, applicants are encouraged to submit an original and seven copies. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.224B), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) *If You Deliver Your Application by Hand.*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC, time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.224B), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC, time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(c) *If You Submit Your Application Electronically.*

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC, time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6 a.m. until 12 midnight (Washington, DC, time) Monday–Friday and 6 a.m. until 7 p.m. Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7 p.m. (Washington, DC, time).

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier delivers it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(5) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

Application Forms and Instructions

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, and various assurances and certifications. Please organize the parts and additional materials in the following order:

• PART I: Application for Federal Assistance (ED 424 (Exp. 11/30/2004)) and instructions.

• PART II: Budget Form—Non-Construction Programs (ED 524) and instructions and definitions.

• PART III: Application Narrative.

• PART IV: Additional Materials.

• Estimated Public Reporting Burden.

• Assurances—Non-Construction Programs (Standard Form 424B).

• Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: And Drug-Free Work-Place Requirements (ED Form 80–0013) and instructions.

• Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(**Note:** ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

• Disclosure of Lobbying Activities (Standard Form LLL) and instructions.

• Survey on Ensuring Equal Opportunity for Applicants.

An applicant may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print,

audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 3014.

Dated: August 11, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and, Rehabilitative Services.

Appendix—Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1820–0634. Expiration date: 10/31/2003. We estimate the time required to complete this collection of information to average 30 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651. If you have comments or concerns regarding the status of your submission of this form, write directly to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645.

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants applying in paper copy format are required to submit an original and two copies of each application as provided in this section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants except as noted for unavailability of the e-APPLICATION system.

2. What Should Be Included in the Application?

The application should include an abstract, a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Notice Inviting Applications package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. No, you may not submit more than one application to this competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. The Technical Assistance Program does not place any limit on indirect costs.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under the Technical Assistance Program.

8. Can I Call NIDRR to Find Out if My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

9. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

10. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]
3. Applicant's T-I-N [ ][ ] - [ ][ ][ ][ ][ ][ ][ ]
4. Catalog of Federal Domestic Assistance #: 8 4 [ ][ ][ ][ ]
Title: _____
5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____
6. Novice Applicant ☐ Yes ☐ No
7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)
8. Type of Applicant (Enter appropriate letter in the box.) [ ]

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication
☐ Construction
☐ Non-Construction
—Application
☐ Construction
☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 10/31/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
						0
2. Fringe Benefits						0
						0
4. Equipment						0
						0
6. Contractual						0
						0
8. Other						0
	0	0	0	0	0	0
10. Indirect Costs						0
						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.	OMB Control Number: 1890-0004 Expiration Date: 10/31/2003

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
						0
2. Fringe Benefits						0
						0
4. Equipment						0
						0
6. Contractual						0
						0
8. Other						0
	0	0	0	0	0	0
10. Indirect Costs						0
						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

OMB Control Number: 1890-0004
Expiration Date: 10/31/2003

ED Form No. 524

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0004**. The time required to complete this information collection is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to (insert program office), U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B. For grant projects that will be divided into two or more separately budgeted major activities or sub-projects, show for each budget category of a project year the breakdown of the specific expenses attributable to each sub-project or activity.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

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

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

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

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Do not enter information below unless instructed to do so.

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: This form is for applicants that are nonprofit private organizations (not including private universities). Please complete it to assist the Federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the Federal grants database.

Instructions for Submitting Survey

If submitting hard copy, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it with your application package.

If submitting electronically, please include the PR Award Number assigned to your e-application in the box above entitled "***Do not enter information below unless instructed to do so.***" Place and seal the completed survey in an envelope and mail it to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

[FR Doc. 03–20794 Filed 8–13–03; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Thursday,
August 14, 2003

Part V

Federal Communications Commission

47 CFR Part 73

2002 Biennial Review of Broadcast Ownership Rules, Cross-Ownership of Broadcast Stations and Newspapers, Multiple Ownership of Radio Broadcast Stations in Local Markets, and Definition of Radio Markets and Information Collection Approval; Final Rule and Notice

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 02–277, and MM Docket Nos. 01–235, 01–317, and 00–244, FCC 03–127]

2002 Biennial Review of Broadcast Ownership Rules, Cross-Ownership of Broadcast Stations and Newspapers, Multiple Ownership of Radio Broadcast Stations in Local Markets, and Definition of Radio Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule, announcement of effective date.

SUMMARY: This document confirms that modifications to §§ 73.3555 and 73.3613 of the Commission's rules, adopted in the Commission's biennial review of its broadcast ownership rules, are effective on September 4, 2003.

DATES: Modifications to §§ 73.3613 and 73.3555, published at 68 FR 46285, August 5, 2003, are effective on September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Rita McDonald, Industry Analysis Division, 202–418–2330.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission, at 68 FR 45285, August 5, 2003, published a summary of its Report and Order in MB Docket No. 02–277, and MM Docket Nos. 01–235, 01–317, and 00–244, regarding its broadcast ownership rules. That document adopted modifications to §§ 73.3555 and 73.3613 of the Commission's rules. Those modifications will be effective September 4, 2003. For the effective date of the approval of the information collection burdens associated with these revised sections, see the Notice published elsewhere in this separate part of the **Federal Register**.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–20746 Filed 8–13–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 02–277, and MM Docket Nos. 01–235, 01–317, and 00–244, FCC 03–127]

2002 Biennial Review of Broadcast Ownership Rules, Cross-Ownership of Broadcast Stations and Newspapers, Multiple Ownership of Radio Broadcast Stations in Local Markets, and Definition of Radio Markets; Information Collection Approval

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for revised application forms and certain non-form filings associated with the Commission's rules regarding broadcast ownership. Therefore, the Commission announces that OMB 3060–0027 (FCC Form 301), OMB 3060–0031 (FCC Form 314), OMB 3060–0032 (FCC Form 315), and OMB 3060–1040 (certain non-form filings) are effective.

DATES: Effective August 14, 2003.

FOR FURTHER INFORMATION CONTACT: Peter H. Doyle or Nina Shafran, Audio Division, 202–418–2700; Barbara Kreisman or Jim Brown, Video Division, 202–418–1600.

SUPPLEMENTARY INFORMATION: 1. On July 2, 2003, the Federal Communications Commission released the *Report and Order* in the above-referenced MB/MM dockets revising its broadcast ownership rules (published at 68 FR 46286, August 5, 2003). Certain FCC application forms, amendments that are filed using such forms, and certain non-form filing requirements were revised pursuant to changes adopted in the *Report and Order*. Pursuant to the ''emergency processing'' provisions of the Paperwork Reduction Act of 1995 (5 CFR 1320.13), the Commission has received OMB approval of the revisions to the following application forms: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301 (OMB Control No. 3060–0027); Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314 (OMB Control No. 3060–0031); and Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315 (OMB Control No. 3060–0032). In conjunction with its approval of the revised forms, OMB also approved the information collection requirements associated with amendments to applications on Forms 301, 314, and 315 (see OMB Control No. cited above for each form). Accordingly, the revised forms, including amendments that are filed using these forms, are now effective.

2. OMB also approved certain non-form filings as follows: current TV licensees' requests for temporary waiver or extension of an existing waiver, or amendment to a pending waiver request, of the local TV ownership rule, as well as current licensees' filings related to their existing conditional waivers of the previous one-to-a-market cross-ownership rule. Accordingly, the information collections contained in these non-form, waiver-related filings, titled ''Broadcast Ownership Rules, R&O in MB Docket No. 02–277 and MM Docket Nos. 01–235, 01–317 and 00–244 (OMB Control No. 3060-1040),'' are now effective.

3. Pursuant to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Les Smith, Federal Communications Commission, (202) 418–0217.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–20747 Filed 8–13–03; 8:45 am]

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Federal Register

Vol. 68, No. 157

Thursday, August 14, 2003

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FEDERAL REGISTER PAGES AND DATE, AUGUST

45157–45740 1
45741–46072 4
46073–46432 5
46433–46918 6
46919–47200 7
47201–47440 8
47441–47834 11
47835–48248 12
48249–48528 13
48529–48766 14

CFR PARTS AFFECTED DURING AUGUST

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

Executive Orders:
12722 (See: Notice of July 31, 2003) 45739
12724 (See: Notice of July 31, 2003) 45739
13290 (See: Notice of July 31, 2003) 45739
13313 46073
13314 48249
13222 (See: Notice of August 7, 2003) 47833

Administrative Orders:
Notices:
Notice of July 31, 2003) 45739
Notice of August 7, 2003 47833
Presidential Determinations:
No. 2003–28 47441
No. 2003–29 47443

5 CFR

Proposed Rules:
532 47877

7 CFR

51 46433
250 46434
340 46434
916 48251
917 48251
958 48529
993 46436
996 46919
1778 46077
1794 45157

Proposed Rules:
Ch. I 48574
52 46504
91 48322
96 48322
331 45787
783 47499
Ch. IX 48574
983 45990
991 48575
Ch. X 48574
Ch. XI 48574
1124 46505
1131 46505
1778 46119
4279 46509

8 CFR

204 46925
212 46926
214 46926
231 46926
233 46926

9 CFR

77 47201
82 45741
94 47835
206 47802

10 CFR

140 46929
1015 48531
1018 48531

Proposed Rules:
30 45172
170 46439
171 46439
1015 48575
1018 48575

11 CFR

104 47386
107 47386
110 47386
9001 47386
9003 47386
9004 47386
9008 47386
9031 47386
9032 47386
9033 47386
9034 47386
9035 47386
9036 47386
9038 47386

12 CFR

19 48256
263 48256
308 48256
513 48256
701 46439

Proposed Rules:
3 45900
7 46119
34 46119
208 45900
225 45900
325 45900
567 45900
614 47502
615 47502

14 CFR

15 48543
25 .....46428, 47202, 47445
39 .....46441, 46443, 46444, 47202, 47204, 47207, 47208, 47211, 47213, 47216, 47218, 47447, 47842, 48274, 48544, 48546
71 .....47447, 47448, 47449, 47637, 47844, 47846
97 .....48276, 48277
119 47798

Proposed Rules:
21 46283
39 ....45176, 45177, 46514, 47267, 47513, 48326, 48576
61 46283
65 46283
71 ....47515, 47516, 47518
73 48579
77 46283
91 47269
107 46283
109 46283
121 ....46283, 47269
135 ....46283, 47269
145 46283
154 46283

15 CFR
911 45160
Proposed Rules:
303 45177

16 CFR
305 47449

17 CFR
4 47221
18 48549
30 46446
240 46446
Proposed Rules:
1 46516
240 48724

18 CFR
1304 46930
Proposed Rules:
2 46452
284 48133
388 46456

19 CFR
4 48279
103 47453
111 47455
Proposed Rules:
103 48327

20 CFR
218 45315
225 45315
Proposed Rules:
404 ....45180, 47877
416 45180

21 CFR
172 ....46364, 46403
558 47237
Proposed Rules:
310 48133
334 48133
510 47272
558 47272

22 CFR
41 ....46948, 47460

24 CFR
905 45730
Proposed Rules:
960 45734
3282 47881

25 CFR
170 48549
Proposed Rules:
Ch. 1 45787

26 CFR
1 ....45745, 45772, 46081
301 46081
602 46081
Proposed Rules:
1 ....46516, 46983, 48331

28 CFR
549 47847
Proposed Rules
16 47519
522 46138

29 CFR
697 46949
Proposed Rules
Ch. X 46983

30 CFR
926 46460
Proposed Rules
57 48668
72 47886

31 CFR
50 48280
591 45777
592 45777

32 CFR
21 47150
22 47150
32 47150
34 47150
37 47150
Proposed Rules
199 46526

33 CFR
100 ....46087, 47237, 48553
117 ....45784, 47462, 47850, 47851
165 ....45164, 45165, 47237, 47239, 47241, 47243, 47245, 47464, 47465, 47852, 47854, 48282, 48284, 48555
Proposed Rules:
110 45190
117 ....46139, 47520, 47522
165 ....46984, 47277

36 CFR
4 46477
Proposed Rules:
7 47524

37 CFR
1 48286
2 48286

39 CFR
224 47527
261 47527
262 47527
263 47527
264 47527
265 47527
266 47527
267 47527
268 47527
3001 48293
Proposed Rules:
111 45192

40 CFR
52 ....45897, 46089, 46099, 46101, 46479, 46484, 46487, 47466, 47468, 47473, 47477, 47482, 48557
60 46489
62 48558
63 46102
70 46489
71 45167
81 47964
86 48561
180 ....46491, 47246, 48299, 48302, 48312
261 46951
300 48314
Proposed Rules:
Ch. 1 46435
19 45788
27 45788
51 46436
52 ....46141, 46437, 47279, 47530, 45731, 47532, 47533
62 48581
63 46142
70 46438
141 47640
142 47640
194 47887
271 45192
300 48331
432 48472

41 CFR
Proposed Rules:
51-3 45195
51-4 45195

42 CFR
409 46036
411 46036
412 ....45346, 45674, 47637
413 ....45346, 46036
440 46036
483 46036
488 46036
489 46036
Proposed Rules:
410 47966
419 47966

46 CFR
188 45785
189 45785

47 CFR
1 48446
2 46957
13 46957
25 47856
54 47253
69 46500
80 46957
73 ....45786, 46286, 46502, 47255, 47256, 48764
Proposed Rules:
73 ....46359, 47282, 47283, 47284, 47285

48 CFR
1806 45168
1807 45168
1811 45168
1814 45168
1815 45168
1817 45168
1819 45168
1825 45168
1827 45168
1844 45168
1852 45168
1872 45168

49 CFR
171 48562
172 48562
173 48562
177 48562
178 48562
179 48562
180 48562
191 46109
192 46109
195 46109
390 47860
398 47860
571 ....47485, 48571
Proposed Rules:
71 47533
380 47890
391 47890
571 ....46539, 46546
585 46546
586 46546
589 46546
590 46546
596 46546
1152 48332

50 CFR
17 ....46684, 46870
300 ....47256, 48572
622 47498
635 45169
660 46112
648 47264
679 ....45170, 45766, 46116, 46117, 46502, 47265, 47266, 47875
Proposed Rules:
15 46559
17 ....46143, 46989, 48581
20 47424
32 48583
600 45196
622 48592
635 ....45196, 47404

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 AUGUST 14, 2003

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Grapes grown in—

California; published 7-15-03

Nectarines and peaches grown in—

California; published 8-13-03

Raisins produced from grapes grown in—

California; published 7-15-03

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

International fisheries regulations:

Pacific halibut—

Oregon sport fisheries; additional access; published 8-14-03

Marine mammals:

Commercial fishing authorizations—

Fisheries categorized according to frequency of incidental takes; 2003 list; published 7-15-03

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

On-board diagnostic regulations; partially withdrawn; published 8-14-03

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:

Saginaw River, Bay City, MI; safety zones; published 7-16-03

INTERIOR DEPARTMENT

Indian Affairs Bureau

Lands and water:

Indian Reservation Roads Program funds; distribution; published 8-14-03

JUSTICE DEPARTMENT

Parole Commission

Federal prisoners; paroling and releasing, etc.:

District of Columbia and United States codes; prisoners serving sentences—

Supervision of released prisoners serving supervised release terms; published 7-15-03

SECURITIES AND EXCHANGE COMMISSION

Securities, etc.:

Sarbanes-Oxley Act of 2002; implementation—

Exchange Act periodic reports; inclusion of management's report on internal control over financial reporting and certification; published 6-18-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 7-10-03

Bombardier; published 7-10-03

Textron Lycoming; published 7-10-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Potatoes (Irish) grown in—

Colorado; comments due by 8-20-03; published 7-21-03 [FR 03-18447]

Soybean promotion and research order:

United Soybean Board; membership adjustment; comments due by 8-18-03; published 6-17-03 [FR 03-15270]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Salmon; comments due by 8-22-03; published 7-23-03 [FR 03-18734]

Atlantic coastal fisheries cooperative management—

Atlantic striped bass; comments due by 8-20-03; published 7-21-03 [FR 03-18491]

Northeastern United States fisheries—

Atlantic mackerel, squid, and butterfish; comments due by 8-18-03; published 7-18-03 [FR 03-18343]

DEFENSE DEPARTMENT

Courts-Martial Manual; review; comments due by 8-19-03; published 6-20-03 [FR 03-15574]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural Gas Policy Act:

Blanket sales certificates; comments due by 8-18-03; published 8-5-03 [FR 03-19879]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

Nonroad diesel engines and fuel; emissions standards; comments due by 8-20-03; published 5-23-03 [FR 03-09737]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Colorado; comments due by 8-21-03; published 7-22-03 [FR 03-18302]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Colorado; comments due by 8-21-03; published 7-22-03 [FR 03-18303]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Pennsylvania; comments due by 8-18-03; published 7-18-03 [FR 03-18294]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 8-22-03; published 7-23-03 [FR 03-18739]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Florida; comments due by 8-21-03; published 7-22-03 [FR 03-18500]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Florida; comments due by 8-21-03; published 7-22-03 [FR 03-18501]

Georgia; comments due by 8-18-03; published 7-18-03 [FR 03-18153]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Indiana; comments due by 8-20-03; published 7-21-03 [FR 03-18298]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Indiana; comments due by 8-20-03; published 7-21-03 [FR 03-18299]

New York; comments due by 8-20-03; published 7-21-03 [FR 03-18300]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

New York; comments due by 8-20-03; published 7-21-03 [FR 03-18301]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Texas; comments due by 8-20-03; published 7-1-03 [FR 03-16582]

Hazardous waste program authorizations:

Georgia; comments due by 8-18-03; published 7-18-03 [FR 03-18296]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:

Georgia; comments due by 8-18-03; published 7-18-03 [FR 03-18297]

ENVIRONMENTAL PROTECTION AGENCY

Human testing; standards and criteria; comments due by

8-20-03; published 8-6-03 [FR 03-20154]

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Azoxystrobin; comments due by 8-18-03; published 6-18-03 [FR 03-15261]

Bacillus pumilus (strain QST2808); comments due by 8-18-03; published 6-18-03 [FR 03-15129]

Glyphosate; comments due by 8-18-03; published 6-18-03 [FR 03-15128]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Federal-State Joint Board on Universal Service—

Lifeline and Link-Up programs; comments due by 8-18-03; published 7-17-03 [FR 03-18056]

Telecommunications Act of 1996; implementation—

Numbering resource optimization; telephone number portability; comments due by 8-20-03; published 7-21-03 [FR 03-18364]

Radio stations; table of assignments:

California and Texas; comments due by 8-22-03; published 7-18-03 [FR 03-18228]

Michigan; comments due by 8-22-03; published 7-18-03 [FR 03-18249]

Various States; comments due by 8-22-03; published 7-18-03 [FR 03-18227]

HOMELAND SECURITY DEPARTMENT

Customs and Border Protection Bureau

Electronic cargo information; advance presentation requirement; comments due by 8-22-03; published 7-23-03 [FR 03-18558]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Findings on petitions, etc.—

Johnston's frankenia; delisting; comments due by 8-20-03; published 5-22-03 [FR 03-12748]

Slickspot peppergrass; comments due by 8-18-03; published 7-18-03 [FR 03-18402]

Migratory bird hunting:

Federal Indian reservations, off-reservation trust lands, and ceded lands; comments due by 8-18-03; published 8-8-03 [FR 03-20290]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Ohio; comments due by 8-20-03; published 7-21-03 [FR 03-18468]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Organization, functions, and authority delegations:

Temporary duty travel; issuance of motor vehicle for home-to-work transportation; comments due by 8-22-03; published 6-23-03 [FR 03-15693]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

NARA facilities:

Exhibition Hall; hours of operation; comments due by 8-18-03; published 6-17-03 [FR 03-15190]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 8-18-03; published 7-18-03 [FR 03-18260]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 8-18-03; published 7-18-03 [FR 03-18262]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 8-18-03; published 7-2-03 [FR 03-16694]

GROB-WERKE; comments due by 8-18-03; published 7-15-03 [FR 03-17818]

McDonnell Douglas; comments due by 8-18-03; published 7-24-03 [FR 03-18791]

Pratt & Whitney; comments due by 8-18-03; published 6-17-03 [FR 03-15224]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Rolls-Royce plc; comments due by 8-21-03; published 8-6-03 [FR 03-19475]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Saab; comments due by 8-20-03; published 7-21-03 [FR 03-18419]

Airworthiness standards:

Special conditions—

AMSAFE, Inc., Zenair model CH2000 airplane; comments due by 8-18-03; published 7-17-03 [FR 03-18071]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness standards:

Special conditions—

Boeing Model 747SP airplane; comments due by 8-21-03; published 7-22-03 [FR 03-18625]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class D airspace; comments due by 8-21-03; published 7-22-03 [FR 03-18515]

Class D and Class E4 airspace; comments due by 8-18-03; published 7-17-03 [FR 03-18074]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class E airspace; comments due by 8-20-03; published 7-9-03 [FR 03-17253]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Private activity bonds; definition; comments due by 8-19-03; published 5-14-03 [FR 03-11926]

Qualified retirement plans; deemed IRAs; comments due by 8-18-03; published 5-20-03 [FR 03-12675]

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*.

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H.R. 74/P.L. 108–67

To direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California. (Aug. 1, 2003; 117 Stat. 880)

S. 1280/P.L. 108–68

To amend the PROTECT Act to clarify certain volunteer liability. (Aug. 1, 2003; 117 Stat. 883)

Last List August 1, 2003

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