AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

12–19–03 Friday
Vol. 68 No. 244 Dec. 19, 2003

Pages 70689–70994

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV03–966–4 FR]

Tomatoes Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Florida Tomato Committee (Committee) for the 2003–04 and subsequent fiscal periods from $.02 to $.025 per 25-pound container or equivalent of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Authorization to assess tomato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; 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. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, 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, Florida tomato 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 tomatoes beginning August 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 2003–04 and subsequent fiscal periods from $.02 to $.025 per 25-pound container or equivalent of tomatoes.

The Florida tomato marketing order 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 members of the Committee are producers of Florida tomatoes. 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 2001–02 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 (68 FR 15338, March 31, 2003; 66 FR 56599, November 9, 2001).

The Committee met on September 4, 2003, and unanimously recommended 2003–04 expenditures of $1,773,100 and an assessment rate of $0.025 per 25-pound container of tomatoes. In comparison, last year's budgeted expenditures were $1,910,840. The assessment rate of $0.025 is $.005 higher than the rate currently in effect. The number of assessable containers during 2003–04 is estimated to be 50 million and the recommended assessment rate would generate $1,250,000 in income. The Committee s financial reserve is now estimated to be $1,767,427 and is available to cover the deficit in assessment income. The increased assessment rate allows the Committee to maintain its financial reserve at a level it deems appropriate.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $700,000 for education and promotion, $405,000 for salaries, $320,000 for research, $49,000 for employee health insurance, and $61,000 for employee retirement. Budgeted expenses for these items in 2002–03 were $900,000 for education and promotion, $370,730 for salaries, $320,000 for research, $38,250 for employee health insurance, and $54,860 for employee retirement, respectively.

The assessment rate recommended by the Committee was derived by examining anticipated expenses and expected shipments of Florida tomatoes and considering available reserves. As mentioned earlier, tomato shipments for the year are estimated at 50 million 25-pound containers or equivalents which should provide $1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee s authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve currently total $1,767,427 and are within the maximum permitted by the order of not to exceed one fiscal period s expenses as stated in § 966.44.

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 2003–04 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 100 producers of tomatoes in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2002–03 season was approximately $9.59 per 25-pound container or equivalent, and total fresh shipments for the 2002–03 season were 50,974,342 25-pound equivalent cartons of tomatoes. Committee data indicates that approximately 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average annual price of $9.59 per 25-pound container, about 75 percent of handlers could be considered small businesses under SBA s definition. Therefore, the majority of handlers of Florida tomato handlers may be classified as small entities. It also is believed that the majority of Florida tomato producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.02 to $0.025 per 25-pound container of tomatoes. The Committee unanimously recommended 2003–04 expenditures of $1,773,100 and an assessment rate of $0.025 per 25-pound container or equivalent. The assessment rate of $0.025 is $0.005 higher than the 2002–03 rate. The quantity of assessable tomatoes for the 2003–04 season is estimated at 50 million 25-pound cartons or equivalents. Thus, the $0.025 rate should provide $1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee s authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $700,000 for education and promotion, $405,000 for salaries, $320,000 for research, $49,000 for employee health insurance, and $61,000 for employee retirement. Budgeted expenses for these items in 2002–03 were $900,000 for education and promotion, $370,730 for salaries, $320,000 for research, $38,250 for employee health insurance, and $54,860 for employee retirement, respectively.

As previously mentioned, the number of assessable containers during 2003–04 is estimated to be 50 million and the recommended assessment rate would generate $1,250,000 in income. The Committee s financial reserve is now estimated to be $1,767,427 and is available to cover the deficit in assessment income. The increased assessment rate will allow the Committee to maintain its financial reserve at a level it deems appropriate.

The Committee reviewed and unanimously recommended 2003–04 expenditures of $1,773,100 which included increases in administrative and office salaries, research, and education and promotion programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the tomato industry. The assessment rate of $0.025 per 25-pound container or equivalent of tomatoes was then determined by examining the anticipated expenses and expected shipments and considering available reserves. The recommended assessment rate should generate $1,250,000 in income. This is approximately $523,100 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2003–04 season could range between $6.45 and $10.37 per 25-pound container of tomatoes. Therefore, the estimated assessment revenue for the 2003–04 season as a percentage of total grower revenue could range between .4 and .2 percent, respectively.

This action 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 meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 4, 2003, meeting was a public meeting 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 Florida tomato 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 October 27, 2003 (68 FR 61146). Copies of the proposed rule were also mailed or sent via facsimile to all tomato handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending November 26, 2003, was provided for 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 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 handlers are already receiving 2003–04 crop tomatoes from growers. The 2003–04 fiscal period began on August 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

■ For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 966.234 is revised to read as follows:

§ 966.234 Assessment rate.

On and after August 1, 2003, an assessment rate of $0.025 per 25-pound container or equivalent is established for Florida tomatoes.

Dated: December 15, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31265 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 28

[Docket No. 03–26]

RIN 1557–AC04

Rules, Policies, and Procedures for Corporate Activities; International Banking Activities

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is finalizing the proposed rule published on April 23, 2003 amending our regulations pertaining to the foreign operations of national banks, and Federal branches and agencies of foreign banks operating in the United States. The final rule generally makes regulatory requirements more streamlined and risk-focused. It clarifies certain regulatory definitions and simplifies approval procedures for foreign banks seeking to establish Federal branches and agencies in the United States. These changes will further conform the treatment of Federal branches and agencies of foreign banks to that of their domestic national bank counterparts consistent with the national treatment principles of the International Banking Act of 1978.

EFFECTIVE DATE: This rule is effective on January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Counsel, Legislative & Regulatory Activities Division, (202) 874–5090; Carlos Hernandez, Senior International Advisor, International Banking & Finance, (202) 874–4730; or Crystal Maddox, Senior Licensing Analyst, Licensing Policy & Systems, (202) 874–5060.

SUPPLEMENTARY INFORMATION:

I. Introduction and Overview of Comments Received

As part of our ongoing effort to streamline regulatory requirements to reduce unnecessary regulatory burdens, the OCC published a notice of proposed rulemaking (NPRM) to amend 12 CFR parts 5 and 28 in the **Federal Register** on April 23, 2003 (68 FR 19949). In the NPRM, we proposed streamlining certain application processes for Federal branches and agencies and updating the types of activities in which they may engage in light of developments in Federal banking law and in furtherance of the principle of national treatment. The proposal was also designed to reduce regulatory burden on national banks conducting foreign activities and on Federal branches and agencies supervised by the OCC by eliminating outdated requirements and replacing them with more streamlined procedures.

The OCC received eight comments on the NPRM. The commenters included several Members of Congress, Federal and state banking agencies, a bank trade association, and an association of state banking officials. Four of the commenters generally supported the OCC's efforts to streamline our regulatory processes and reduce regulatory burden, but offered suggestions to modify various portions of the proposal. Two commenters did not favor the proposal, asserting that the NPRM exceeds the OCC's statutory authority and is inconsistent with congressional intent. These commenters requested that the OCC withdraw the proposal until Congress provides the necessary authority. One of the commenters focused exclusively on a narrow legal question involving interstate branching. Another commenter focused only on the impact on pending legislation if the OCC were to apply certain definitions used in the NPRM to define those same terms in pending legislation if it were to be enacted by the U.S. Congress.

As we explain in the discussion that follows, the OCC has concluded that there is ample authority supporting the revisions to our regulations that we proposed. We also explain why the concerns raised by certain commenters are not, in fact, raised by this proposal. Accordingly, we decline to withdraw the proposal. However, the final rule includes modifications to the proposal intended to address certain of the

suggestions made by the commenters and clarify points about which there may have been misunderstandings. The following discussion highlights those modifications.

II. Discussion

A. Changes to 12 CFR Part 5

1. Definitions (Revised § 5.3)

The proposal revised § 5.3 to update references to the OCC units that should receive certain applications. The OCC received no comments on this technical amendment and adopts it as proposed.

2. Permissible Non-Controlling Equity Investments (Revised § 5.36)

The proposal stated that a well-capitalized, well-managed Federal branch may make non-controlling investments and use the after-the-fact notice procedure set forth in 12 CFR 5.36 in the same manner as a national bank.

Three commenters addressed this amendment. One commenter supported the proposed change, stating that it is consistent with national treatment principles. The second was also supportive, indicating that it would have no objection to the proposed regulatory change as long as any investment made by the branch is a permissible investment under the Bank Holding Company Act and the foreign bank obtains any necessary authorizations from the Board of Governors of the Federal Reserve System (FRB). The commenter requested that OCC clarify that these conditions apply to these investments. As discussed below, to address this point, we are adding language to the final regulation in 12 CFR 28.10(c) clarifying that nothing in the OCC's rules relieves a foreign bank from complying with requirements imposed by the FRB in accordance with applicable law.

A third commenter opposed allowing Federal branches to make non-controlling equity investments, stating that there is ''no statutory authorization [in the International Banking Act of 1978] for the investments referred to [in] the new proposed section, which relies solely on the principle of national treatment.'' This commenter disagreed with the OCC's interpretation of national treatment under the International Banking Act of 1978 (IBA), asserting that the IBA's national treatment scheme does not treat Federal branches as national banks but rather treats Federal branches as *branches* of national banks.

The OCC disagrees. The commenter's interpretation is not supported by the plain language of the statute or its legislative history, court cases that have interpreted the statute, or the Congressional intent of the IBA.

The plain language of section 4(b) of the IBA [1] states:

> Except as otherwise specifically provided in this Act or in rules, regulations, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a *national bank* at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a *national bank* doing business at the same location. * * * (emphasis added).

After carefully examining legislative history and Congressional intent, a U.S. Court of Appeals interpreted the national treatment language in the IBA and concluded that the IBA is intended to ''treat federally-chartered foreign and *domestic banks* as similarly as possible under the [IBA] (emphasis added).'' [2] The court expressly addressed the issue of whether establishing a Federally chartered office of a foreign bank parallels the opening of a national bank's principal office or the opening of a branch of a national bank. The court addressed this issue in the context of upholding the OCC's authority to license a foreign bank's Federal interstate branch or agency in a state that permits foreign banks to establish state-chartered interstate branches or agencies. The court concluded that, subject to the requirements of the IBA, Congress intended that the opening of a foreign bank's initial Federal home-state office is analogous to the opening of a domestic national bank's principal office, and the opening of additional intrastate and interstate Federal offices by the foreign bank under the IBA would be comparable to the opening of branches of a national bank.[3] Thus, the court found that a Federal branch can be treated as a national bank *or* branch thereof depending on the context. The OCC's regulations and this final rule are consistent with this interpretation.

The legislative history of the IBA indicates that the national treatment language in the IBA was not intended to be an inflexible standard for applying national bank laws to Federal branches and agencies. Congress recognized that, because Federal branches and agencies are offices of foreign banks and not separately incorporated entities, certain adjustments in the strict application of the national bank laws may be necessary in order to observe this legal and operational reality. Congress charged the OCC with the primary responsibility to administer this comprehensive framework for Federal offices of foreign banks.[4]

The commenter further argues that the IBA does not give Federal branches and agencies the authority to engage in activities permitted for national banks under the National Bank Act (NBA) unless the authority is also found in the IBA. This interpretation also is not consistent with the plain language of the statute or its legislative history.

The legislative history of the IBA describes the language in section 4(b) quoted above to provide that, ''[w]ith certain exceptions, statutory or regulatory, the *activities* of a Federal branch or agency shall be conducted in the same manner as a *national bank* (emphasis added).'' [5] Moreover, a court found that, in light of the overriding national treatment objective of the IBA, the IBA should be construed in such a way as to minimize the extent to which a Federal branch or agency is treated differently from a national bank.[6] As a result, a Federal branch operating in a state has the same rights and privileges as, and is subject to the same restrictions, penalties, and conditions that apply to, a national bank operating in that same state unless the IBA or the Comptroller provides otherwise. While the IBa does not specifically mention the NBA as the source of authority for a Federal branch's ''rights and privileges'' to engage in activities, it incorporates all of the laws that provide authority to national banks, including the NBA, subject to any applicable statutory or regulatory exceptions.

For all of these reasons, the OCC adopts § 5.36 as proposed.

3. Federal Branches and Agencies (Revised § 5.70)

The proposal amended § 5.70, which describes filing requirements for corporate activities and transactions involving Federal branches and agencies, to ensure consistency with proposed changes to 12 CFR part 28 described elsewhere in this proposal. The proposal deleted the definition of

[1] 12 U.S.C. 3102(b).

[2] *CSBS* v. *Conover,* 715 F.2d 604, 616 (D.C. Cir. 1983), *cert denied*, 466 U.S. 927 (1984).

[3] *Id.* at 616–617. *See also* 12 U.S.C. 3103(a) (providing that a foreign bank may establish an Federal branch or agency outside of its home state if such establishment would be permitted for a national bank establishing an interstate branch office and subject to certain other criteria (enacted in 1994 in the Riegle-Neal Interstate Banking and Branching Efficiency Act)).

[4] *See* S. Rep. No. 95–1073, 95th Cong., 2d Sess. 7 (1978), *reprinted in* 1978 U.S.C.C.A.N. at 1427.

[5] *Id.* at 21, *reprinted in* 1978 U.S.C.C.A.N. at 1441.

[6] *See CSBS* v. *Conover,* 715 F.2d at 617.

''change the status of an office'' while the definition of ''establish'' a Federal branch or agency was revised to comport with other proposed changes to those definitions in part 28. No comments were received on this provision and, thus, the OCC is adopting it as proposed with only a minor, technical change.

B. Changes to 12 CFR Part 28: Foreign Operations of a National Bank

1. Filing Requirements for Foreign Operations of a National Bank (Revised § 28.3)

The proposed rule amended § 28.3 to provide that no notice to the OCC is required if a national bank closes or relocates a foreign branch. No comments were received on this proposed change and we are adopting it as proposed.

2. Filing of Notice (Revised § 28.5)

The proposed rule made a technical change to § 28.5 with respect to identifying the appropriate OCC office to receive certain notices. We did not receive any comments on this change and we, thus, are adopting it as proposed.

C. Changes in 12 CFR Part 28: Operations of Federal Branches and Agencies of Foreign Banks

1. Authority, Purpose, and Scope (Revised § 28.10(b) and New § 28.10(c))

The proposal did not include revisions to § 28.10, which sets out the authority, purpose, and scope for subpart B of part 28, which pertains to Federal branches and agencies of foreign banks. One commenter thought that we should clarify that other legal requirements, in addition to those contained in the OCC's rules, may apply to certain transactions involving Federal branches and agencies. This clarification is simply an express statement of current law and 12 CFR 28.12(i) already has a limited statement of this principle with respect to the approval requirements for a Federal branch or agency.[7] However, we agree that it is helpful to include a broader statement in the regulatory text. Accordingly, we have added a sentence, at § 28.10(c), saying that nothing in any of the OCC's rules relieves a foreign bank of requirements that may be imposed under other provisions of applicable law. We also made a conforming technical amendment to the heading in § 28.10(b) and deleted current § 28.12(i).

These changes clarify that none of the revisions adopted in the final rule supersedes any legal requirements that are imposed by the FRB in the FRB's Regulation K[8] or are imposed under any other applicable law. For example, Federal law provides that, subject to certain exceptions, the operations of a Federal branch or agency are subject to the ''same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location.'' 12 CFR 28.13(a)(1). Accordingly, U.S. domestic laws also may apply to a Federal branch or agency to the same extent that they would apply to a national bank operating at the same location.

2. Definitions (Revised § 28.11)

The IBA, which governs the operations of foreign banks in the United States through branches and agencies and other offices, sets standards for establishing the offices of foreign banks and requires the OCC to approve the ''establishment'' of Federal branches and agencies of foreign banks. Part 28 currently defines the term ''establish'' to mean initial entry of a foreign bank into the United States via a Federal branch or agency; the opening of additional branches and agencies, whether through intrastate or interstate branching; mergers and other consolidations; and ''changes in status.'' The term ''changes in status'' means both expansions (*e.g.*, from a Federal agency to a Federal branch) and contractions in activities (*e.g.* from a Federal branch into a Federal agency).

The NPRM deleted the separate definition of ''changes in status'' from part 28 and incorporated certain elements of that definition in a revised definition of the term ''establish a Federal branch or agency''. These amendments result in contractions in activities, *e.g.*, conversion from a Federal branch to a Federal agency, being deleted from the type of transactions that would require a filing with the OCC. Most commenters generally supported the OCC's efforts to reduce regulatory burden such as this change to § 28.11 and one commenter specifically supported eliminating the requirement that a foreign bank must give prior notice to the OCC when contracting the level of its U.S. activities by converting from a Federal branch to a Federal agency. Accordingly, we are adopting this amendment as proposed.

In addition, we are making one clarifying and technical change to the definitions in § 28.11 that was not proposed in the NPRM. The definition of ''manual'' in § 28.11(u) (as redesignated herein) means the Comptroller's Corporate Manual as defined in 12 CFR 5.2(c). In an interim rule effective April 14, 2003 (68 FR 17890), the OCC amended § 5.2(c) to reflect that the Comptroller's Corporate Manual has been replaced with the Comptroller's Licensing Manual. We are, thus, making a conforming change to § 28.11(u) to clarify that the term ''manual'' has the same meaning as in § 5.2(c).

3. Approval and Licensing Requirements for a Federal Branch or Agency (Revised § 28.12(a))

The proposed rule provided that, consistent with national treatment, and analogous to the national bank chartering process, the OCC would *license* a foreign bank's initial Federal branch or agency. However, while subsequent offices would require regulatory *approval* in accordance with applicable law, no additional license would be required for those subsequent establishments unless the additional office constitutes an expansion of activities in the U.S. (*e.g.*, the foreign bank's license is for a limited Federal branch or an agency and the additional office would be a full-service branch).

One commenter praised this provision in the NPRM because it would reduce the burdens associated with the licensing process when a foreign bank is establishing additional Federal branches and agencies. Another commenter, however, thought that ''[i]t may be possible to issue a single license to a foreign bank with branches and agencies in multiple states'' but opposed the change on the basis of the same national treatment arguments as presented in connection with the change to 12 CFR 5.36. The commenter also was concerned about the OCC using the single licensing procedure to change substantive legal requirements.

We disagree with the national treatment arguments raised for the same reasons that we explained above when discussing the comments on our proposed change to 12 CFR 5.36.

Most important, however, is that the substantive legal requirements applicable to Federal branches and agencies are unaffected by permitting those entities to operate under a single license. As explained in the NPRM, ''[t]his change in licensing procedures would not affect the substance of the OCC's regulatory and supervisory responsibilities. The OCC would

[7] Prior to the changes made by this final rule, 12 CFR 28.12(i) provided that nothing in § 28.12 relieved a foreign bank from the requirement to obtain any approval that may be necessary under the FRB's Regulation K, 12 CFR part 211.

[8] 12 CFR part 211.

continue to review and approve applications for additional offices in accordance with applicable law * * * and would continue to supervise these additional offices in the same manner as it [currently] does. * * *'' 68 FR 19950 (April 23, 2003).

Therefore, the single licensing proposal is adopted without substantive modification but with one technical change. The final rule clarifies that the single license will be the method of licensing Federal branches and agencies after the effective date of the final rule. Foreign banks already operating in the United States with multiple Federal branches or agencies will have the option of converting to a single license or continuing to maintain multiple licenses for their offices, however.

4. CCS Requirements (Revised § 28.12(b)(5))

The proposal provided that the OCC generally would consider whether a foreign bank applicant is subject to comprehensive supervision on a consolidated basis by its home country supervisor (CCS) only in certain cases and *may,* in its discretion, consider it in other cases as deemed appropriate. Under the proposal, as required by statute, the OCC would apply the standards of CCS when acting on applications for interstate establishments. *See* 12 U.S.C. 3103(a)(3)(A). In connection with other applications to establish a Federal branch or agency, the OCC *may* consider CCS if necessary based on the circumstances of a particular case. This change in the OCC's rule would have no effect on the statutory requirement that the FRB make a CCS determination in connection with any application by a foreign bank to establish a U.S. office, as that requirement is interpreted by the FRB.

One commenter specifically supported this amendment to streamline the OCC's application procedures. No commenter opposed the change. Thus, the OCC is adopting this amendment as proposed.

5. Expedited Approval Procedures (New § 28.12(e)(2) and (e)(3), Revised § 28.12(e)(4), and New § 28.12(i))

The proposal provided for expedited review of additional types of applications to establish a Federal branch or agency. Under proposed new § 28.12(e)(2), a foreign bank could establish a new intrastate Federal branch or agency after providing written notice to the OCC 45 days in advance of the proposed establishment. The OCC may waive the 45-day period in certain circumstances, as well as suspend the notice period or require an application if the notice raises significant policy or supervisory issues.

In addition, under proposed new § 28.12(e)(3), an eligible foreign bank's [9] application to establish a Federal branch or agency interstate would be conditionally approved as of the 45th day after the OCC receives the completed application, unless the OCC notified the bank that the filing was not eligible for expedited review. The proposal also revised § 28.12(e)(4) to provide for expedited approval of certain other applications submitted by an eligible foreign bank. In addition, because a contraction in U.S. activities (*i.e.*, converting an existing Federal branch into a limited Federal branch or into a Federal agency) will no longer be considered as an establishment, proposed new § 28.12(i) would provide that such contractions in operations would require only a written notice to the OCC within 10 days after the conversion.

One commenter supported the proposed streamlined approval procedures and urged the OCC to shorten the period for processing notices for intrastate expansions and *de novo* interstate branching applications submitted by eligible foreign banks. Shortening the time period to 30 days, the commenter said, would enable such notices to be processed in the same timeframe as applications by foreign banks to convert state offices to Federal offices. When processing applications for such conversions, the OCC may have no prior experience with the foreign bank parent. Thus, according to the commenter, the processing period should not be longer for notices for intrastate and interstate expansions than for state-to-Federal conversions because, in the case of the expansions, the OCC already is familiar with the foreign bank since it has an existing federally licensed office.

The OCC agrees with this commenter and has changed the final rule to reduce the prior approval period from 45 days to 30 days in the case of intrastate expansions by foreign banks and interstate expansions by eligible foreign banks. The OCC believes that 30 days is sufficient time for the OCC to review the notice or application and advise the foreign bank that the proposed expansion is disapproved, or that additional time is needed to evaluate the notice or application.

Another commenter argued that the OCC's proposed notice and application procedures for certain foreign banks to expand through intrastate and interstate offices does not satisfy the IBA's prior approval requirements.

The OCC disagrees. It is crucial to recognize that the proposal did not alter the statutory prior approval requirements. The proposal established streamlined procedures permitting certain foreign banks to seek approval through a notice or application procedure to be filed prior to establishing an additional intrastate branch or agency or an interstate branch or agency, respectively. In particular, under the proposal, the OCC is deemed to have given its prior approval under these streamlined procedures if we do not advise the foreign bank that the proposed expansion is disapproved within a specified time period. Our regulations contain similar procedures to provide for streamlined and expedited review for qualifying national banks in other situations where OCC approval is required by law. *See, e.g.*, 12 CFR 5.39(i) (approval to acquire or commence activities in a financial subsidiary), 12 CFR 5.30(f)(5) (approval for establishment or relocation of a branch).

Five commenters argued that the OCC's interstate branching procedures for eligible foreign banks may be interpreted as providing substantive authority for foreign banks to branch interstate in violation of law. Two comment letters sought clarification in the final rule regarding whether a foreign bank may establish a *de novo* branch within a state that does not permit *de novo* branching, contending that the NPRM left the matter ambiguous. The commenter said that section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103–328,[10] authorizes interstate branching for foreign banks with Federal branches and agencies to the same extent as national banks. However, section 103 of that Act [11] requires that, in the case of an application by a national bank to establish a *de novo* branch in a state that is not the bank's home state, the

[9] The term ''eligible foreign bank'' is defined in § 28.12(f) and generally includes a foreign bank that (1) has Federal branches and agencies that have a composite rating of ''1'' or ''2'' under the interagency rating system for U.S. branches and agencies of foreign banks, (2) is not subject to an enforcement action (but, if subject to such an action, the OCC can waive this requirement), and, (3) if applicable, has an ''outstanding'' or ''satisfactory'' rating under the Community Reinvestment Act. The NPRM amends this definition in § 28.12(f) to permit foreign banks that have no Federal branches or agencies to be considered ''eligible foreign banks'' when engaging in certain transactions. As described herein, the OCC is adopting this amendment to § 28.12(f) as proposed.

[10] 12 U.S.C. 1831u.

[11] 12 U.S.C. 36(g).

Comptroller may approve an application if the host state has in effect a non-discriminatory law that expressly permits all out-of-state banks to establish *de novo* branches in the state. The commenters in those letters said that Florida has not passed such authorizing legislation and has, in fact, passed a statute prohibiting interstate *de novo* branching. The commenters concluded by requesting that the OCC clarify in the final rule that foreign banks will not be able to branch interstate in a manner prohibited to domestic national banks.

The procedural changes we proposed do not permit this result. As we said in the NPRM, none of the proposed changes affects any legal requirements that are otherwise applicable under law with respect to a national bank's foreign activities *''or the operations of foreign banks in the United States.''* As a commenter pointed out, the IBA contains provisions that expressly apply to branching by Federal branches and agencies. *See* 12 U.S.C. 3102(h)(A), 3103. Section 3103(a)(1) generally references domestic national banking law to determine the interstate branching authority of Federal branches and agencies. It permits a foreign bank to establish a Federal branch or agency outside of its home state ''to the extent that the establishment and operation of such branch would be permitted under section 5155(g) of the Revised Statutes (12 U.S.C. 36(g)) or section 44 of the Federal Deposit Insurance Act (12 U.S.C. 1831u) if the foreign bank were a national bank whose home State is the same State as the home State of the foreign bank.'' 12 U.S.C. 3103(a)(1). Moreover, the statute directs the OCC to apply not only the requirements of the IBA with respect to the establishment of a Federal branch or agency but also capital and merger requirements under domestic banking law. 12 U.S.C. 3103(a)(3). The legislative history likewise states that ''a foreign bank would be permitted to establish or acquire [F]ederal branches in states other than its home state to the same extent that a national bank from the foreign bank's home state may engage in interstate branching.'' H. Rep. 103–448, 103d Cong., 2d Sess., 18 (1994).

The IBA, however, also authorizes branches and agencies of foreign banks to branch interstate and to upgrade interstate offices under circumstances that may be different from those permitted for domestic banks. *See* 12 U.S.C. 3103(a)(7). Notwithstanding the domestic bank parity provisions, a foreign bank may establish a branch or agency in a state other than its home state if the host state permits the establishment and operation of the branch or agency and any such branch accepts only deposits permissible for Edge Act corporations.[12] Also, notwithstanding the domestic bank parity provisions, foreign banks may upgrade interstate offices subject to certain conditions.

We proposed to establish expedited procedures for eligible foreign banks to obtain OCC approval of applications to open a Federal branch or agency on an interstate basis. The proposal did not provide a new source of authority for a foreign bank to establish such an interstate office. Nor did it make any substantive changes in the legal requirements for interstate branching under the IBA.

For these reasons, we have not changed the final rule in the manner suggested by these commenters. In addition, we do not believe that it is appropriate to include a provision in the regulation clarifying that the OCC will not approve an application of a foreign bank to establish a *de novo* branch in a state in which *de novo* banking is not permitted for domestic institutions. As explained above, the statement is unnecessary. The regulation provides only for expedited approval procedures for such applications and does not address any of the substantive legal requirements for interstate branching.

Thus, the changes discussed above to shorten the period for processing notices for intrastate expansions by foreign banks and *de novo* interstate branching applications submitted by eligible foreign banks are the only changes that are made in the final rule that apply to the expedited approval procedures proposed in the NPRM.

6. Eligible Foreign Bank (Revised § 28.12(f))

Under current part 28, foreign banks with Federal branches and agencies that all are rated ''1'' or ''2'' under the applicable interagency rating system are eligible for expedited processing of certain applications and other filings. 12 CFR 28.12(e) and (f). The proposed rule would revise § 28.12(f) to provide that a foreign bank that has no Federal branches or agencies also is ''eligible'' if it is engaging in a state-to-Federal conversion and its state offices satisfy the eligibility criteria. This change would simply codify procedures that we have already adopted in our Manual.

No comments were received on this proposal and the OCC is adopting it as proposed.

[12] *See* 12 CFR 211.6.

7. After-the-Fact Notice for Certain Acquisitions (New § 28.12(h))

Under current part 28, if foreign bank A, which has a Federal branch, merges with foreign bank B, which does not have a Federal branch or agency, an application to establish the Federal branch would have to be submitted to the OCC if B were the surviving institution. Under current § 28.12(g), the two foreign banks may proceed with their merger without approval of B's establishment of the branch if B provides reasonable advance notice of the transaction to the OCC. Prior to the merger, B must also apply to the OCC or commit to abide by the OCC's decision on the application.

Proposed new § 28.12(h) provided an expedited procedure for foreign bank B if B already has banking offices in the United States. However, we would retain the discretion to require prior approval to establish the Federal branch or agency if necessary for prudential reasons.

One commenter supported streamlining this procedure in the manner proposed by the OCC. The OCC is, thus, adopting this provision without change.

8. Exceptions to Usual Filing Procedures (Revised § 28.12(j))

This technical change revised § 28.12(j) (as redesignated in this proposal) to clarify that the OCC also reserves the right to adopt different procedures with respect to a part 28 filing or class of filings.

No comments were received on this provision and we are adopting it without change.

9. Other Applications Accepted (New § 28.12(k) (Designated as § 28.12(l) in the NPRM))

This technical amendment added § 28.12(k) to codify the current OCC practice of accepting applications or notices filed with other Federal agencies that contain the necessary information required by the OCC to approve an application or act on a particular request. Under the proposal, we retained the discretion to request additional information from an applicant as deemed necessary. This amendment is adopted without change.

10. Capital Equivalency Deposits (Revised § 28.15(a)(1) and New § 28.15(a)(3))

The IBA requires Federal branches and agencies to establish and maintain a CED. 12 U.S.C. 3102(g). In 2002, the OCC issued a final rule revising certain requirements regarding CED deposit arrangements based on a supervisory

assessment of the risks presented by the particular institutions.[13] The additional changes proposed in the NPRM further reduce unnecessary burden and simplify compliance with the CED requirements.

The proposal amended § 28.15(a)(1) to clarify the types of assets eligible to be deposited in a CED. Currently, a CED must consist of bank-eligible securities, dollar deposits payable in the United States, certificates of deposit payable in the United States, and other assets permitted by the OCC. The proposal included dollar deposits payable in any Group of Ten (G–10) country and added repurchase agreements to the list of permissible CED assets. The proposal also clarified that the OCC's authority to permit other assets to qualify for the CED is limited to other assets that are ''similar'' to those expressly included in the statute.

In addition, the proposal clarified the OCC's current policy to exclude liabilities of an international banking facility to third parties, and of a Federal branch to an international banking facility, when calculating the required amount of a CED. Also, the proposed rule permitted the OCC, like some other regulators, to exclude liabilities from repurchase agreements on a case-by-case basis.

One commenter generally supported the OCC's efforts to alleviate burden associated with the CED requirements and specifically supported these changes to part 28. Consequently, the OCC is adopting this amendment as proposed.

11. Capital Equivalency Deposits (Revised § 28.15(e))

In the NPRM, we proposed to clarify the meaning of the term ''located'' in the context of the location of a depository bank that holds a CED deposit, relative to a Federal branch or agency subject to the CED requirement. Under the IBA, for purposes of the CED requirement, a *depository bank* must be *located* in the state where the branch or agency is *located.* 12 U.S.C. 3102(g)(1). The proposal provided that a depository bank is ''located'' in the state where it has its main office or a branch and a Federal branch or agency is ''located'' in the state in which it is licensed or in the state that is its parent foreign bank's home state. The proposal further clarified that a foreign bank with interstate offices has the discretion to consolidate all or some of its CEDs into one depository bank. We specifically requested comments on whether such a consolidated account should provide for segregated assets for specific offices or whether it would be sufficient for the account to contain a consolidated amount large enough to cover the CEDs of all of the individual offices.

One commenter supported the proposed changes in the NPRM with respect to CEDs, particularly the proposal to allow multiple Federal branches and agencies to maintain a single consolidated CED at a U.S. depository bank. The commenter expressed its view that it would not be necessary for the consolidated CED account to contain segregated assets to cover specific offices; instead, the commenter said that maintaining a consolidated account large enough to cover the operations of all of the individual offices would be sufficient.

Another commenter opposed the proposed changes, contending first that the NPRM should have stated that a Federal branch or agency is located in each state in which it maintains an office under the plain meaning of the term ''located.'' Second, the commenter stated that the legislative history of the CED requirement ''demonstrates Congressional concern that assets be available to local creditors in the event that a foreign bank becomes insolvent.'' The commenter added that segregated accounts promote efficient liquidations by minimizing the need for local creditors to pursue remedies in other states. Segregated accounts, according to the commenter, would better protect local creditors in situations where the foreign bank operated both Federal and state branches or agencies.[14]

The OCC agrees that in order to be eligible to hold a foreign bank's CED for its Federal branches and agencies, a depository bank's main office or a branch must be located in the state in which the Federal branch or agency's foreign bank parent has its home office or in any state in which a Federal branch or agency office is maintained. In the latter case, the state may not necessarily be the state in which the Federal branch or agency is licensed under the single-licensing approach described above but may be any state in which the foreign bank has a Federal branch or agency office.

This interpretation of the term ''located'' is reasonable and consistent with national treatment and the intent of the IBA. As one commenter agrees, the CED statute does not define the term ''located.'' Thus, by analogy to national banking law,[15] the OCC has determined that a U.S. depository bank holding a foreign bank's CED is located in the state in which the depository bank has its main office or a branch and the final rule clarifies this interpretation.

Under the IBA, the OCC has the authority to establish limitations and conditions for the CED and its administration. 12 U.S.C. 3102(g)(1). Section 3102(g)(3) further extends this authority, stating that ''[t]he deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may provide.'' This very specific authority is enhanced by the IBA's general grant of authority to the OCC to issue rules, regulations, and orders pertaining to the establishment and administration of Federal branches. 12 U.S.C. 3102(b). Moreover, the legislative history of the IBA recognized that, while the objective of Federal regulation under the IBA is to achieve equal treatment between foreign and domestic banks, some discretion was necessary to develop a regulatory framework that is appropriate to the actual operations of foreign banking institutions.[16]

With regard to requiring foreign banks to segregate assets in a consolidated CED account, we have considered the comments received and have decided that foreign banks with multiple branches and/or agencies that consolidate their CED deposits should maintain book entry segregation of assets for each office. We are clarifying new § 28.18(c)(3) to add such a requirement. This will help to promote orderly liquidations and will help to ensure that local creditors of each office of a foreign bank are protected. In addition, we are revising new § 28.15(e) to clarify that the total amount of the CED will continue to be calculated on an office-by-office basis to ensure that there are sufficient assets available for each individual office.

[13] 67 FR 41619 (June 19, 2002)

[14] Three commenters criticized the proposed definition of where a Federal branch or agency is ''located'' on the basis that the proposed definition would be inconsistent with Congressional intent and would ''administratively overturn'' language included in pending legislation in the House of Representatives in the 108th Congress—section 107 of H.R. 1375, the proposed ''Financial Services Regulatory Relief Act of 2003.''

As explained above, our proposed definition of ''located'' is an interpretation of current law *for purposes of determining which depository banks are eligible to hold a foreign bank's CED deposit for its Federal branch or agency.* It does not affect the *amount* of the CED that is required, or the determination of where a branch or agency is located, for purposes of any future standard that keys a CED requirement to the requirements of the state in which a branch or agency is ''located.''

[15] *See* 12 U.S.C. 81.

[16] *See supra* note 4 (and accompanying text).

12. Deposit-Taking by an Uninsured Federal Branch (Revised § 28.16(b)(8))

As proposed, the final rule makes a technical correction to § 28.16(b)(8) to correct the citation to the FRB's Regulation K (12 CFR 211.6).

13. Maintenance of Accounts, Books, and Records (New § 28.18(c)(3))

Proposed new § 28.18(c)(3) required a foreign bank that has interstate Federal branches or agencies and combines its CEDs into one account to designate one of its Federal offices to maintain consolidated information about the Federal branches and agencies covered by the CEDs. The final rule includes this provision without change. In addition, the final rule includes the provision described above that will require consolidated CED deposits to reflect book entry segregation of assets for each Federal branch or agency office.

14. Maintenance of Assets (Revised § 28.20(a)(2))

Under current law, we may impose asset maintenance requirements on a foreign bank to hold certain assets in the state in which its Federal branch or agency is located if necessary for prudential, supervisory, or enforcement reasons. 12 CFR 28.20(a)(1). These requirements are in addition to the CED requirements but, in determining compliance with any asset maintenance requirements imposed by the OCC, we must give credit to the amount of assets held in the CED and other reserves or assets required under the IBA. 12 U.S.C. 3102(g)(4).

The proposal revised § 28.20(a)(2) to delete the requirement that the amount of assets held by the foreign bank cannot be less than 105% of the aggregate amount of liabilities of the Federal branch or agency, payable at or through the Federal branch or agency. Under the proposal, we would prescribe the amount of assets on a case-by-case basis and there would be no set minimum. This change is adopted in the final rule.

15. Voluntary Liquidation (Revised § 28.22(a) and (b))

The proposal made certain changes in the voluntary liquidation procedures for Federal branches and agencies. We received no comments on this provision and we are adopting it as proposed.

16. Procedures for Closing Some (But Not All) of a Foreign Bank's Federal Branches and/or Agencies (New § 28.23)

To be consistent with the IBA's national treatment standard, the proposal treated a foreign bank that is closing some but not all of its Federal branches and/or agencies like a national bank that is closing a branch office. We received no comments on this change and we are adopting it as proposed.

17. After-the-Fact Notice of Change in Control (New § 28.25)

The proposal added a new section to part 28 to require a foreign bank to submit a written notice to the OCC when there is a change in control of the foreign bank. The notice would be submitted within 14 days after the foreign bank became aware of the change if no other filing is required under part 28. A foreign bank could provide its supervisory office with the copy of a notice submitted to another Federal regulator to satisfy the requirements of this section. *See* 12 CFR 28.12(k).

No comments were received on this provision and it is adopted as proposed.

18. Loan Production Offices (New § 28.26)

In the NPRM, the OCC provided that a Federal branch may operate a loan production office (LPO), an administrative office, or a regional administrative office that conducts other types of representational activities, as part of a branch license. The OCC noted that, since national banks may operate such offices, allowing Federal branches to do so is consistent with national treatment.

Two commenters addressed this proposal. One noted that it would view loan production offices as representative offices and their activities would be limited as such and noted that such offices would need to be approved by the FRB in accordance with applicable law. The commenter requested that the final rule refer to these requirements.

The second commenter stated that the IBA does not permit the establishment of such offices and that, if Congress wished to authorize them, it would have expressly done so. This commenter added that offices that are not branches or agencies are treated under Regulation K as representative offices. Since there is no basis for chartering federal representative offices, the IBA does not permit the establishment of loan production offices and other types of non-branch offices, according to the commenter.

With respect to the first comment, as discussed above, we are adding a statement to § 28.10(c) to clarify that nothing in our regulations relieves a foreign bank of any requirement that is imposed by the FRB under applicable law.

We believe that the second commenter is wrong as a matter of law. The fact that certain non-branch offices may be subject to other regulatory requirements does not diminish the ability of the OCC to permit Federal branches to establish such offices. The OCC's authority to allow a Federal branch to establish LPOs or other administrative offices or regional administrative offices as part of its Federal branch license is derived from separate authority. *See* 12 U.S.C. 3102. In addition, as discussed above, the OCC disagrees that the IBA does not provide the authority for a Federal branch to engage in the same activities as a national bank subject to certain statutory and regulatory exemptions.

For these reasons, we have adopted § 28.26 substantially as proposed.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Specifically the proposed rule will reduce burden by: (1) Streamlining procedures for national banks' foreign operations through branches; (2) eliminating the requirement to file an application with the OCC in certain circumstances when a foreign bank downgrades its U.S. operations; (3) requiring approval, but not a new license, for additional Federal branches or agencies opened after the establishment of the initial branch office; and (4) clarifying that a foreign bank with Federal branches and agencies in more than one state may consolidate its capital equivalency deposits in one deposit account in a depository bank that satisfies certain criteria. These revisions will result in cost reductions for national banks and for the U.S. operations of Federal branches and agencies of foreign banks. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L.

104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the OCC 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 information collection requirements contained in the NPRM have been reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 under OMB control number 1557–0102.

However, the paperwork burden for these requirements likely will be transferred to OMB control number 1557–0014. OMB control number 1557–0014 covers the Comptroller's Licensing Manual (Manual). The Manual explains the OCC's policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions, and corporate expansion and structural changes by existing national banks. The Manual includes sample documents to assist the respondent in understanding the types of information the OCC needs to process a filing. The documents are samples only. An applicant may use any format that provides sufficient information for the OCC to act on a particular filing.

The NPRM and this final rule generally eased regulatory requirements and reduced paperwork burden somewhat. The OMB approved burden attributable to the NPRM and this final rule is as follows:

The burden for 12 CFR part 5 is as follows:

12 CFR 5.36:

17 respondents × 1 response per year = 17 responses

17 responses × 1 hour per response = 17 burden hours

The burden for 12 CFR part 28 is as follows:

12 CFR 28.3(a):

45 respondents × 1 response = 45 responses

45 responses × .5 hour per response = 23 burden hours

12 CFR 28.12(a):

4 respondents × 1 response per year = 4 responses

4 responses × 41 hours per response = 164 burden hours

12 CFR 28.12(e)(2):

1 respondent × 1 response per year = 1 response

1 response × 1 hour per response = 1 burden hour

12 CFR 28.12(h):

2 respondents × 1 response per year = 2 responses

2 responses x 1 hour per response = 2 burden hours.

12 CFR 28.12(i):

1 respondent × 1 response per year = 1 response

1 response × 1 hour per response = 1 burden hour.

Executive Order 13132

The Comptroller of the Currency has determined that this final rule does not have any Federalism implications, as required by Executive Order 13132.

List of Subjects

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, parts 5 and 28 of chapter I of title 12 of the Code of Federal Regulations are revised to read as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

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

Authority: 12 U.S.C. 1 *et seq.*, 24a, 24(Seventh), 93a, and 3101 *et seq.*

■ 2. In § 5.3, revise paragraphs (c)(1) and (c)(4) to read as follows:

§ 5.3 Definitions.

* * * * *

(c) * * *

(1) The Licensing Department for all national bank subsidiaries of those holding companies assigned to the Washington, DC, licensing unit;

* * * * *

(4) The licensing unit in the Northeastern District Office for Federal branches and agencies of foreign banks.

* * * * *

■ 3. In § 5.36, redesignate paragraph (f) as paragraph (g) and add a new paragraph (f) to read as follows:

§ 5.36 Other equity investments.

* * * * *

(f) *Non-controlling investments by Federal branches.* A Federal branch that satisfies the well capitalized and well managed standards in 12 CFR 4.7(b)(1)(iii) and § 5.34(d)(3)(ii) may make a non-controlling investment in accordance with paragraph (e) of this section in the same manner and subject to the same conditions and requirements as a national bank, and subject to any additional requirements that may apply under 12 CFR 28.10(c).

* * * * *

■ 4. In § 5.70:

■ a. remove paragraph (c)(1);

■ b. redesignate paragraphs (c)(2)(i) through (v) as paragraphs (c)(1)(i) through (v);

■ c. revise newly redesignated paragraphs (c)(1)(i), (iv), and (v);

■ d. add a new paragraph (c)(1)(vi);

■ e. add a new paragraph (c)(2); and

■ f. revise paragraph (d)(2)(i) to read as follows:

§ 5.70 Federal branches and agencies.

* * * * *

(c) * * *

(1) * * *

(i) Open and conduct business through an initial or additional Federal branch or agency;

* * * * *

(iv) Convert a state branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch or agency;

(v) Relocate a Federal branch or agency within a state or from one state to another; or

(vi) Convert a Federal agency or a limited Federal branch into a Federal branch.

(2) *Federal branch* includes a limited Federal branch unless otherwise provided.

(d) * * *

* * * * *

(2) * * *

(i) Establishes a Federal branch or agency; or

* * * * *

PART 28—INTERNATIONAL BANKING ACTIVITIES

■ 5. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, 161, 602, 1818, 3101 *et seq.*, and 3901 *et seq.*

■ 6. In § 28.3, revise paragraphs (a)(1)(i) and (a)(2) to read as follows:

§ 28.3 Filing requirements for foreign operations of a national bank:

(a) * * *

(1) * * *

(i) Establish or open a foreign branch;

* * * * *

(2) Opens a foreign branch, and no application or notice is required by the FRB for such transaction.

* * * * *

■ 7. In § 28.5, revise paragraphs (a) and (b) to read as follows:

§ 28.5 Filing of notice.

(a) *Where to file.* A national bank shall file any notice or submission required under this subpart with the appropriate supervisory office of the OCC.

(b) *Availability of forms.* Individual forms and instructions for filings are available from the appropriate supervisory office of the OCC.

■ 8. In § 28.10:

■ a. revise the heading in paragraph (b); and

■ b. add a new paragraph (c) to read as follows:

§ 28.10 Authority, purpose, and scope.

* * * * *

(b) Purpose. * * *

(c) *Scope.* This subpart applies to all Federal branches and agencies of foreign banks. Nothing in the OCC's rules relieves a Federal branch or agency from complying with requirements that are imposed by the FRB under Regulation K (12 CFR part 211) or otherwise imposed in accordance with applicable law.

■ 9. In § 28.11:

■ a. remove paragraph (d);

■ b. redesignate paragraphs (e) through (z) as paragraphs (d) through (y);

■ c. revise newly redesignated paragraphs (f)(1), (4), and (5);

■ d. add a new paragraph (f)(6);

■ e. add a new sentence to the end of newly redesignated paragraph (h); and

■ f. revise newly redesignated paragraph (u) to read as follows:

§ 28.11 Definitions.

* * * * *

(f) *Establish a Federal branch or agency* means to:

(1) Open and conduct business through an initial or additional Federal branch or agency;

* * * * *

(4) Convert a state branch or agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch or agency;

(5) Relocate a Federal branch or agency within a state or from one state to another; or

(6) Convert a Federal agency or a limited Federal branch into a Federal branch.

* * * * *

(h) *** Unless otherwise provided, the references in this subpart B of part 28 to a Federal branch include a limited Federal branch.

* * * * *

(u) *Manual* has the same meaning as in 12 CFR 5.2(c).

* * * * *

■ 10. In § 28.12:

■ a. revise paragraphs (a) and (b)(5);

■ b. redesignate paragraphs (e)(2) through (4) as paragraphs (e)(4) through (6);

■ c. add new paragraphs (e)(2) and (3);

■ d. revise newly redesignated paragraph (e)(4);

■ e. revise paragraph (f) in the introductory text;

■ f. redesignate paragraph (h) as paragraph (j);

■ g. add a new paragraph (h);

■ h. revise paragraph (i);

■ i. revise newly redesignated paragraph (j); and

■ j. add a new paragraph (k) to read as follows:

§ 28.12 Approval of a Federal branch or agency.

(a) *Approval and licensing requirements*—(1) *General.* Except as otherwise provided in this section, a foreign bank shall submit an application to, and obtain prior approval from, the OCC before it:

(i) Establishes a Federal branch or agency; or

(ii) Exercises fiduciary powers at a Federal branch.

(2) *Licensing.* A foreign bank must receive a license from the OCC to open and operate its initial Federal branch or agency in the United States. A foreign bank that has a license to operate and is operating a full-service Federal branch need not obtain a new license for any additional Federal branches or agencies, or to upgrade or downgrade its operations in an existing Federal branch or agency. A foreign bank that only has a license to operate and is operating a limited Federal branch or Federal agency need not obtain a new license for any additional limited Federal branches or Federal agencies, or to convert a limited Federal branch into a Federal agency or a Federal agency into a limited Federal branch.

(b) * * *

* * * * *

(5) With respect to an application to establish a Federal branch or agency outside of the foreign bank's home state, whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor. The OCC, in its discretion, also may consider whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor when reviewing any other type of application to establish a Federal branch or agency; and

* * * * *

(e) * * *

* * * * *

(2) *Written notice for an additional intrastate Federal branch or agency.* (i) In a case where a foreign bank seeks to establish intrastate an additional Federal branch or agency, the foreign bank shall provide written notice 30 days in advance of the establishment of the intrastate Federal branch or agency.

(ii) The OCC may waive the 30-day period required under paragraph (e)(2)(i) of this section if immediate action is required. The OCC also may suspend the notice period or require an application if the notification raises significant policy or supervisory concerns.

(3) *Expedited approval procedures for an interstate Federal branch or agency.* An application submitted by an eligible foreign bank to establish and operate a de novo Federal branch or agency in any state outside the home state of the foreign bank is deemed conditionally approved by the OCC as of the 30th day after the OCC receives the filing, unless the OCC notifies the foreign bank prior to that date that the filing is not eligible for expedited review. In the event that the FRB has approved the application prior to the expiration of the period, then the OCC's approval shall be deemed a final approval.

(4) *Conversions.* An application submitted by an eligible foreign bank to establish a Federal branch or agency as defined in 12 CFR 28.11(f)(4) or (f)(6) is deemed approved by the OCC as of the 30th day after the OCC receives the filing, unless the OCC notifies the foreign bank prior to that date that the

filing is not eligible for expedited review.

* * * * *

(f) *Eligible foreign bank.* For purposes of this section, a foreign bank is an eligible foreign bank if each Federal branch and agency of the foreign bank or, if the foreign bank has no Federal branches or agencies and is engaging in an establishment of a Federal branch or agency as defined in 12 CFR 28.11(f)(4), each state branch and agency:

* * * * *

(h) *After-the-fact notice for an eligible foreign bank.* Unless otherwise provided by the OCC, a foreign bank proposing to establish a Federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an existing U.S. bank subsidiary or a Federal or state branch or agency may proceed with the transaction and provide after-the-fact notice to the OCC within 14 days of the transaction, if:

(1) The resulting bank is an ''eligible foreign bank'' under paragraph (f) of this section; and

(2) No Federal branch established by the transaction accepts deposits that are insured by the FDIC pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(i) *Contraction of operations.* A foreign bank shall provide written notice to the OCC within 10 days after converting a Federal branch into a limited Federal branch or Federal agency.

(j) *Procedures for approval.* A foreign bank shall file an application for approval pursuant to this section in accordance with 12 CFR part 5 and the Manual. The OCC reserves the right to adopt materially different procedures for a particular filing, or class of filings, pursuant to 12 CFR 5.2(b).

(k) *Other applications accepted.* As provided in 12 CFR 5.4(c), the OCC may accept an application or other filing submitted to another U.S. Government agency that covers the proposed activity or transaction and contains substantially the same information as required by the OCC.

■ 11. In § 28.15:

■ a. revise paragraph (a)(1)(ii);

■ b. redesignate paragraph (a)(1)(iv) as (a)(1)(v);

■ c. revise paragraph (a)(1)(iii) by removing the word ''or'' at the end;

■ d. add a new paragraph (a)(1)(iv);

■ e. revise newly redesignated paragraph (a)(1)(v);

■ f. add a new paragraph (a)(3);

■ g. redesignate paragraph (e) as (f); and

■ h. add a new paragraph (e) to read as follows:

§ 28.15 Capital equivalency deposits.

(a) * * *

(1) * * *

(i) * * *

(ii) United States dollar deposits payable in the United States or payable in any other Group of Ten country;

(iii) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument;

(iv) Repurchase agreements; or

(v) Other similar assets permitted by the OCC to qualify to be included in the CED.

* * * * *

(3) *Exceptions.* In determining the amount of the CED, the OCC excludes liabilities of an international banking facility (IBF) to third parties and of a Federal branch of a foreign bank to an IBF. The OCC may exclude liabilities from repurchase agreements on a case-by-case basis.

* * * * *

(e)(1) *Deposit and Consolidation.* As provided in 12 U.S.C. 3102(g), a foreign bank with a Federal branch or agency shall deposit its CED into an account in a bank that is located in the state in which the Federal branch or agency is located. For this purpose, such depository bank is considered to be located in those states in which it has its main office or a branch. A foreign bank with Federal branches or agencies in more than one state may consolidate some or all of its CEDs into one such account.

(2) *Calculation.* The total amount of the consolidated CED shall continue to be calculated on an office-by-office basis.

* * * * *

■ 12. In § 28.16, revise paragraph (b)(8) to read as follows:

§ 28.16 Deposit-taking by an uninsured Federal branch.

* * * * *

(b) * * *

(8) Persons who may deposit funds with an Edge corporation as provided in the FRB's Regulation K, 12 CFR 211.6, including persons engaged in certain international business activities; and

* * * * *

■ 13. In § 28.18, add a new paragraph (c)(3) to read as follows:

28.18 Recordkeeping and reporting.

* * * * *

(c) * * *

* * * * *

(3) A foreign bank with a Federal branch or agency in more than one state that consolidates its CEDs into one account in accordance with § 28.15(e) shall designate a participating Federal branch or agency to maintain consolidated asset, liability, and capital equivalency account information for all Federal branches and agencies covered by the consolidated deposit. A foreign bank with a consolidated CED shall maintain a book entry accounting of assets designated under the consolidated CED for each office of that foreign bank.

■ 14. In § 28.20, revise the first sentence of paragraph (a)(2) to read as follows:

§ 28.20 Maintenance of assets.

(a) * * *

* * * * *

(2) If the OCC requires asset maintenance, the amount of assets held by a foreign bank shall be prescribed by the OCC after consideration of the aggregate amount of liabilities of the Federal branch or agency, payable at or through the Federal branch or agency. * * *

* * * * *

■ 15. In § 28.22, revise paragraphs (a) and (b) to read as follows:

§ 28.22 Voluntary liquidation.

(a) *Procedures to close all Federal branches and agencies.* Unless otherwise provided, in cases in which a foreign bank proposes to close all of its Federal branches or agencies, the foreign bank shall comply with applicable requirements in 12 CFR 5.48 and the Manual, including requirements that apply to an expedited liquidation of an insured Federal branch.

(b) *Notice to customers and creditors.* A foreign bank shall publish notice of the impending closure of each Federal branch or agency for a period of two months in every issue of a local newspaper where the Federal branch or agency is located. If only weekly publication is available, the notice must be published for nine consecutive weeks.

* * * * *

■ 16. Redesignate § 28.23 as § 28.24.

■ 17. Add a new § 28.23 to read as follows:

§ 28.23 Procedures for closing of some of a foreign bank's Federal branches and/or agencies.

In cases where § 28.22 does not apply, and a foreign bank is closing one or more, but not all, of its Federal branches and/or agencies, it shall follow the

procedures set forth in 12 U.S.C. 1831r–1(a) and (b) (branch closings).

■ 18.Add new § 28.25 to read as follows:

§ 28.25 Change in control.

(a) *After-the-fact notice.* In cases in which no other filing is required under subpart B of this part, a foreign bank that operates a Federal branch or agency shall inform the OCC in writing of the direct or indirect acquisition of control of the foreign bank by any person or entity, or group of persons or entities acting in concert, within 14 calendar days after the foreign bank becomes aware of a change in control.

(b) *Additional information.* The foreign bank shall furnish the OCC with any additional information the OCC may require in connection with the acquisition of control.

■ 19. Add a new § 28.26 to read as follows:

§ 28.26 Loan production offices.

A Federal branch may establish lending offices, make credit decisions, and engage in other representational activities at a site other than a Federal branch office, subject to the same rights, privileges, requirements and limitations that apply to national banks under 12 CFR 7.1003, 7.1004, and 7.1005.

Dated: December 15, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–31342 Filed 12–18–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin Meglumine Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Norbrook Laboratories, Ltd. The ANADA provides for the veterinary prescription use of flunixin meglumine injectable solution for the control of inflammation in horses, beef cattle, and nonlactating dairy cattle.

DATES: This rule is effective December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV 104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland, filed ANADA 200–308 for the use of Flunixin Injection by veterinary prescription for the control of inflammation in horses, beef cattle, and nonlactating dairy cattle. Norbrook Laboratories' Flunixin Injection is approved as a generic copy of Schering-Plough Animal Health's BANAMINE (flunixin) Solution, approved under NADA 101–479. The ANADA is approved as of November 17, 2003, and the regulations in § 522.970 (21 CFR 522.970) are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.970 [Amended]

■ 2. Section 522.970 *Flunixin meglumine solution* is amended in paragraph (b)(1) by removing ''000061 and 059130'' and by adding in its place ''000061, 055529, and 059130''.

Dated: December 9, 2003.

Linda Tollefson,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 03–31294 Filed 12–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[TD 9100]

RIN 1545–BC62

Guidance Necessary To Facilitate Business Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations designed to eliminate regulatory impediments to the electronic filing of certain income tax returns and other forms. These regulations affect business taxpayers who file income tax returns electronically. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 19, 2003.

Applicability Date: These regulations apply with respect to taxable years beginning after December 31, 2002. The applicability of §§ 1.170A–11T, 1.556–2T. 1.565–1T, 1.936–7T, 1.1017–1T, 1.1368–1T, 1.1377–1T, 1.1502–21T, 1.1502–75T, 1.1503–2T, 1.6038B–1T, and 301.7701–3T will expire on or before December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Nathan Rosen, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and pending receipt and evaluation of

public comments, approved by the Office of Management and Budget under control number 1545–1868. Responses to this collection of information are mandatory.

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 control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and 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.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301) designed to eliminate regulatory impediments to the electronic submission of tax returns and other forms filed by corporations, partnerships and other businesses.

In 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685) (1998). In relevant part, RRA 1998 states that the policy of Congress is to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA 1998 sets a long-range goal for the IRS to have at least 80 percent of all Federal tax returns filed electronically by 2007. Section 2001(b) of RRA 1998 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing. On January 30, 2003, the IRS published final regulations (TD 9040) eliminating a number of regulatory impediments to the electronic filing of Form 1040, ''U.S. Individual Income Tax Return.''

The IRS has identified a number of regulatory provisions that impede the ability of business entities to file returns electronically. Some of these regulations, for example, impede electronic filing by requiring taxpayers to include third-party signatures on their tax returns or by requiring taxpayers to attach documents or statements generated by a third party. Others require a taxpayer to sign an IRS form and file it as an attachment to the taxpayer's income tax return. These regulations eliminate the impediments for taxable years beginning after December 31, 2002. The regulations generally affect taxpayers who must file any of the following forms: Form 926, ''Return by a U.S. Transferor of Property to a Foreign Corporation''; Form 972, ''Consent of Shareholder To Include Specific Amount in Gross Income''; Form 973, ''Corporation Claim for Deduction for Consent Dividends''; Form 982, ''Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)''; Form 1120, ''U.S. Corporation Income Tax Return''; Form 1120S, ''U.S. Income Tax Return for an S Corporation''; Form 1122, ''Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return''; Form 5471, ''Information Return of U.S. Persons With Respect To Certain Foreign Corporations''; Form 5712–A, ''Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)''; and Form 8832, ''Entity Classification Election.''

Explanation of Provisions

1. Form 926: Return by a U.S. Transferor of Property to a Foreign Corporation

Section 6038B provides that transferors of property to foreign corporations must, in certain circumstances, file information returns with the Secretary regarding such transactions. Section 1.6038B–1(b)(1)(i) requires the transferor to file the return on Form 926 as an attachment to its income tax return. Under § 1.6038B–1(b)(1)(i) and (ii), filers of Form 926 must sign the form and attachments to the form are subject to the declaration under penalties of perjury that the information submitted is true, correct, and complete. The signature requirement impedes electronic filing of the transferor's income tax return because Form 926 cannot yet be signed electronically. These regulations eliminate the obligation to sign Form 926 and provide, instead, that Form 926 and any attachments to the form are verified by signing the income tax return with which the form and attachments are filed.

2. Form 972: Consent of Shareholder To Include Specific Amount in Gross Income

Section 565 allows a corporation and its shareholders to treat certain hypothetical corporate distributions as actual dividends. Section 1.565–1(b)(1) requires shareholders to use Form 972 to elect such treatment and requires each consenting shareholder (or an authorized agent) to sign the form. Section 1.565–1(b)(3) requires the corporation to attach the signed Form 972 to its income tax return for the taxable year in which it claims the dividends paid deduction for the hypothetical dividends. Requiring corporations to attach a signed Form 972 impedes electronic filing of their income tax returns because third-party signatures cannot be incorporated into an electronic return. These regulations provide that an unsigned copy of Form 972 may be submitted with the corporation's income tax return if the corporation retains the signed original in its records.

3. Form 973: Corporation Claim for Deduction for Consent Dividends

A corporation uses Form 973 to claim the dividend treatment permitted by section 565. Section 1.565–1(b)(3) requires the corporation to sign Form 973 under penalties of perjury and submit the form with its tax return. This signature requirement impedes electronic filing of a corporation's income tax return because Form 973 cannot yet be signed electronically. These regulations eliminate the obligation to sign Form 973 and provide, instead, that Form 973 is verified by signing the income tax return with which the form is filed.

4. Form 982: Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)

Section 1017 provides for basis reductions when income from discharge of indebtedness is excluded from gross income. If a partnership has income from discharge of indebtedness, § 1.1017(g) permits its partners to request that the partnership reduce the basis of partnership depreciable property with respect to the partners. Section 1.1017–1(g)(2)(iii)(A) requires a partnership that consents to this basis reduction to prepare a statement describing, among other things, the amount of the reduction. Section 1.1017–1(g)(2)(iii)(B) requires the affected partners to attach a copy of that statement to their income tax returns.

Requiring partners to attach the partnership consent statement impedes the electronic filing of their income tax returns because the partnership statement cannot yet be incorporated into all electronic returns. To remedy this impediment, these regulations eliminate the obligation to attach the partnership consent statement and provide, instead, that taxpayers must

retain the consent statement in their records.

5. Form 1120: U.S. Corporation Income Tax Return

Section 1503 prescribes certain rules for computing tax for corporations filing consolidated returns. Section 1.1503–2(g) permits dual consolidated losses of dual resident corporations to offset the income of domestic affiliates under specified circumstances, including entry into an agreement described in § 1.1503–2(g)(2)(i). The corporation entering into the agreement must attach the agreement to its timely filed U.S. income tax return for the taxable year in which the loss is incurred. The agreement must be signed under penalties of perjury by the person who signs the income tax return. Section 1.1503–2(g)(2)(iv)(B)(3)(iii) also requires a successor corporation to file an agreement described in § 1.1503–2(g)(2)(i) to prevent recapture of the dual consolidated loss in certain circumstances. The new agreement must be signed under penalties of perjury by the person who signs the income tax return. Section 1.1503–2(g)(2)(vi)(B) requires corporations to file annual certifications with respect to dual consolidated losses. The annual certification must be signed under penalties of perjury by the person who signs the corporation's income tax return. The signature requirements in § 1.1503–2(g)(2)(i), (g)(2)(iv)(B)(3)(iii), and (g)(2)(vi)(B) impede electronic filing of the corporation's income tax return because neither the agreement nor the annual certification can be signed electronically. These regulations eliminate the obligations under § 1.1503–2(g)(2)(i) and (iv)(B)(3)(iii) to attach a signed agreement and provide, instead, that an unsigned copy of the agreement may be submitted with the corporation's income tax return if the corporation retains the signed original in its records. These regulations also eliminate the obligation under § 1.1503–2(g)(2) (vi)(B) to sign the annual certification and provide, instead, that the annual certification is verified by signing the income tax return with which the certification is filed.

Section 170 addresses the tax deductibility of charitable contributions and gifts. Section 1.170A–11(b)(1) provides that, under certain conditions, corporations may treat a charitable contribution as paid during a taxable year even if the contribution occurs in the following taxable year. A corporation claiming a charitable deduction for a taxable year under this provision must attach a copy of the resolution of the board of directors authorizing the contribution to its return for the year. In addition, the corporation must attach a declaration, signed under penalties of perjury, that the resolution was adopted during the taxable year. *See* § 1.170A–11(b)(2). Requiring taxpayers to attach a signed declaration impedes electronic filing of Form 1120 because the declaration cannot be signed electronically. The regulations eliminate the requirement of a signed declaration and provide, instead, that the declaration is verified by signing the return. The regulations also slightly expand the content of the declaration by requiring that it state the date on which the board of directors authorized the contribution. Requiring taxpayers to attach a copy of the resolution authorizing the contribution may also impede electronic filing of Form 1120 because including the resolution increases the size of the electronic return file in a potentially burdensome manner. The regulations eliminate this requirement and provide, instead, that the resolution must be retained in the taxpayer's records.

Section 1.1502–21(b)(3)(i) provides that a consolidated group of corporations may elect to relinquish carryback treatment with respect to a consolidated net operating loss for any consolidated return year. The consolidated group elects this treatment by attaching a statement to the group's income tax return for the relevant year. The regulations require the statement to be signed by the common parent. This signature requirement impedes electronic filing of Form 1120 because the statement cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement.

Section 1.1502–21(b)(3)(ii)(B) provides that a group of corporations acquiring a new member may elect to relinquish part of the carryback period with respect to certain net operating losses of the new member. The election is made in a statement attached to the group's income tax return. The statement must be signed by the common parent, the new member, and any other corporation joining the group with the new member. This signature requirement impedes electronic filing of Form 1120 because third-party signatures cannot be incorporated into an electronic return. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement.

6. Form 1120S: U.S. Income Tax Return for an S Corporation

Section 1377 provides that under certain circumstances an S Corporation may elect to treat a taxable year as if it consisted of two separate taxable years. Section 1.1377–1(b)(5) provides that an S Corporation elects this treatment by attaching a signed statement to its income tax return. This signature requirement impedes electronic filing of Form 1120S because the statement described in § 1.1377–1(b)(5) cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement that is verified by signing the return.

Section 1.1368–1(g)(2)(i) provides a similar election for purposes of determining the treatment of distributions by an S Corporation in the event of certain ownership changes. Section 1.1368–1(g)(2)(iii) provides that an S Corporation makes this election by attaching a statement, signed by an officer of the corporation, to its income tax return for the relevant taxable year. This signature requirement impedes electronic filing of Form 1120S because the statement described in § 1.1368–1(g)(2)(iii) cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement that is verified by signing the return.

Section 1.1368–1(f) allows an S corporation to make certain elections relating to the source of its distributions. Section 1.1368–1(f)(5)(iii) provides that an S corporation makes these elections by attaching a statement containing specified information to its income tax return. An officer of the corporation must sign the statement under penalties of perjury. This signature requirement impedes electronic filing of Form 1120S because the statement described in § 1.1368–1(f)(5)(iii) cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement that is verified by signing the return.

7. Form 1122: Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return

Section 1.1502–75(h)(2) provides that, when an affiliated group of corporations files a consolidated return for the first time, each subsidiary must consent to the filing by signing Form 1122 and the signed consent forms must be attached to the consolidated return. Requiring the group to file signed consent forms

impedes electronic filing of consolidated returns because Form 1122 cannot yet be signed electronically. These regulations retain the requirement that each subsidiary consent to filing a consolidated return but eliminate the impediment to electronic filing by permitting the group to submit unsigned copies of the consents with its return if it retains the signed originals in its records.

8. Form 5471: Information Return of U.S. Persons With Respect to Certain Foreign Corporations

Section 1.556–2(e)(2) provides that certain U.S. shareholders of a foreign personal holding company must attach a number of items to their income tax returns relating to property the company owns or operates. In particular, § 1.556–2(e)(2)(vii) requires certain shareholders to attach a copy of the contract, lease or rental agreement covering the property. A shareholder attaches these items to Form 5471, and in turn attaches that form to its return. Requiring shareholders to attach a copy of these documents to an income tax return impedes electronic filing because the documents cannot yet be incorporated into all electronic returns. These regulations eliminate this requirement and provide, instead, that a copy of the contract, lease or rental agreement must be retained in the shareholder's records.

9. Form 5712–A: Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)

Section 1.936–7(a), Q&A 1 provides that a possessions corporation makes the election under section 936(h)(5) to use the cost sharing or profit split method by filing a signed Form 5712–A that includes a declaration that all affiliated group members have consented to the election. The electing corporation attaches the Form 5712–A to Form 5735, ''Possessions Corporation Tax Credit,'' which in turn must be attached to the corporation's income tax return. Requiring taxpayers to sign Form 5712–A impedes electronic filing of corporate income tax returns because Form 5712–A cannot yet be signed electronically. These regulations eliminate the signature requirement and permit the election to be made using an unsigned Form 5712–A that is verified by signing the return.

10. Form 8832: Entity Classification Election

An eligible business entity may file Form 8832 to specify the way in which it is to be classified for federal tax purposes. The form must be signed under penalties of perjury. Section 301.7701–3(c)(1)(ii) provides that in certain circumstances the entity must attach a copy of Form 8832 to its tax or information returns. The requirement to attach a copy of Form 8832 impedes electronic filing of tax and information returns because a copy of the signed form cannot yet be incorporated into all electronic returns. These regulations provide that the requirement to attach a copy of Form 8832 to a return may be satisfied with an unsigned copy.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary and final regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Nathan Rosen, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 301 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.170A–11 is amended by revising paragraph (b)(2) to read as follows:

§ 1.170A–11 Limitation on, and carryover of, contributions by corporations.

* * * * *

(b) * * *

(2) [Reserved]. For further guidance *see* § 1.170A–11T(b)(2).

* * * * *

■ **Par. 3.** Section 1.170A–11T is added to read as follows:

§ 1.170A–11T Limitation on, and carryover of, contributions by corporations (temporary).

(a) [Reserved]. For further guidance, *see* § 1.170A–11(a).

(b) Election by corporations on an accrual method—(1) [Reserved]. For further guidance, *see* § 1.170A–11(b)(1).

(2) The election must be made at the time the return for the taxable year is filed, by reporting the contribution on the return. There shall be attached to the return when filed a written declaration stating that the resolution authorizing the contribution was adopted by the board of directors during the taxable year. For taxable years beginning before January 1, 2003, the declaration shall be verified by a statement signed by an officer authorized to sign the return that it is made under penalties of perjury, and there shall also be attached to the return when filed a copy of the resolution of the board of directors authorizing the contribution. For taxable years beginning after December 31, 2002, the declaration must also include the date of the resolution, the declaration shall be verified by signing the return, and a copy of the resolution of the board of directors authorizing the contribution is a record that the taxpayer must retain and keep available for inspection in the manner required by § 1.6001–1(e).

(c) through (d) [Reserved]. For further guidance, *see* § 1.170A–11(c) through (d).

■ **Par. 4.** Section 1.556–2 is amended by revising paragraph (e)(2)(vii) and adding paragraph (e)(3) to read as follows:

§ 1.556–2 Adjustments to taxable income.

* * * * *

(e) * * *

(2) * * *

(vii) [Reserved]. For further guidance, *see* § 1.556–2T(e)(2)(vii) and (3).

* * * * *

(3) [Reserved]. For further guidance, *see* § 1.556–2T(e)(3).

* * * * *

■ **Par. 5.** Section 1.556–2T is added to read as follows:

§ 1.556–2T Adjustments to taxable income (temporary).

(a) through (e)(2)(vi) [Reserved]. For further guidance, *see* § 1.556–2(a) through (e)(2)(vi).

(e)(2)(vii) In the case of a return for a taxable year beginning before January 1, 2003, a copy of the contract, lease, or rental agreement;

(e)(2)(viii) through (xi) [Reserved]. For further guidance *see* § 1.556–2(e)(2)(viii) through (xi).

(3) If the statement described in § 1.556–2(e)(2) is attached to a taxpayer's income tax return for a taxable year beginning after December 31, 2002, a copy of the applicable contract, lease or rental agreement is not required to be submitted with the return, but must be retained by the taxpayer and kept available for inspection in the manner required by § 1.6001–1(e).

(f) [Reserved]. For further guidance, *see* § 1.556–2(f).

■ **Par. 6.** Section 1.565–1 is amended by revising paragraph (b)(3) to read as follows:

§ 1.565–1 General rule.

* * * * *

(b) * * *

(3) [Reserved]. For further guidance, *see* § 1.565–1T(b)(3).

* * * * *

■ **Par. 7.** Section 1.565–1T is added to read as follows:

§ 1.565–1T General rule (temporary).

(a) through (b)(2) [Reserved]. For further guidance, *see* § 1.565–1(a) through (b)(2).

(b)(3) A consent may be filed at any time not later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. With such return, and not later than the due date thereof, the corporation must file Forms 972 for each consenting shareholder, and a return on Form 973 showing by classes the stock outstanding on the first and last days of the taxable year, the dividend rights of such stock, distributions made during the taxable year to shareholders, and giving all the other information required by the form. For taxable years beginning before January 1, 2003, the Form 973 filed with the corporation's income tax return shall contain or be verified by a written declaration that is made under the penalties of perjury and the Forms 972 filed with the return must be duly executed by the consenting shareholders. For taxable years beginning after December 31, 2002, the Form 973 filed with the corporation's income tax return shall be verified by signing the return and the Forms 972 filed with the return must be duly executed by the consenting shareholders or, if unsigned, must contain the same information as the duly executed originals. If the corporation submits unsigned Forms 972 with its return for a taxable year beginning after December 31, 2002, the duly executed originals are records that the corporation must retain and keep available for inspection in the manner required by § 1.6001–1(e).

(c) [Reserved]. For further guidance, *see* § 1.565–1(c).

■ **Par. 8.** Section 1.936–7 is amended by:

■ 1. Designating the undesignated introductory text as paragraph (a).

■ 2. Redesignating paragraphs (a) through (c) as paragraphs (b) through (d), respectively.

■ 3. Revising newly designated paragraph (b), Q. & A.1.

■ The revision reads as follows:

§ 1.936–7 Manner of making election under section 936(h)(5); special election for export sales; revocation of election under section 936(a).

* * * * *

(b) * * *

Q. 1. [Reserved]. For further guidance, *see* § 1.936–7T(b) Q. 1.

A. 1. [Reserved]. For further guidance, *see* § 1.936–7T(b) A. 1.

* * * * *

■ **Par. 9.** Section 1.936–7T is added to read as follows:

§ 1.936–7T Manner of making election under section 936(h)(5); special election for export sales; revocation of election under section 936(a) (temporary).

(a) [Reserved]. For further guidance, *see* § 1.936–7 (a).

(b) *Manner of making election.*

Q. 1: How does a possessions corporation make an election to use the cost sharing method or profit split method?

A.1: A possessions corporation makes an election to use the cost sharing or profit split method by filing Form 5712–A (''Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)'') and attaching it to its tax return. Form 5712–A must be filed on or before the due date (including extensions) of the tax return of the possessions corporation for its first taxable year beginning after December 31, 1982. The electing corporation must set forth on the form the name and the taxpayer identification number or address of all members of the affiliated group (including foreign affiliates not required to file a U.S. tax return). All members of the affiliated group must consent to the election. For elections filed with respect to taxable years beginning before January 1, 2003, an authorized officer of the electing corporation must sign the statement of election and must declare that he has received a signed statement of consent from an authorized officer, director, or other appropriate official of each member of the affiliated group. Elections filed for taxable years beginning after December 31, 2002, will incorporate a declaration by the electing corporation that it has received a signed consent from an authorized officer, director, or other appropriate official of each member of the affiliated group and will be verified by signing the return. The election is not valid for a taxable year unless all affiliates consent. A failure to obtain an affiliate's written consent will not invalidate the election out if the possessions corporation made a good faith effort to obtain all the necessary consents or the failure to obtain the missing consent was inadvertent. Subsequently created or acquired affiliates are bound by the election. If an election out is revoked under section 936(h)(5)(F)(iii), a new election out with respect to that product area cannot be made without the consent of the Commissioner. The possessions corporation shall file an amended Form 5712–A with its timely filed income tax return to reflect any changes in the names or number of the members of the affiliated group for any taxable year after the first taxable year to which the election out applies. By consenting to the election out, all affiliates agree to provide information necessary to compute the cost sharing payment under the cost sharing method or combined taxable income under the profit split method, and failure to provide such information shall be treated as a request to revoke the election out under section 936(h)(5)(F)(iii).

Q. & A. 2 through 8 [Reserved]. For further guidance, *see* § 1.936–7(b), Q. & A. 2 through 8.

(c) and (d) [Reserved]. For further guidance, *see* § 1.936–7(c) and (d).

■ **Par. 10.** Section 1.1017–1 is amended by revising paragraph (g)(2)(iii)(B) to read as follows:

§ 1.1017–1 Basis reductions following a discharge of indebtedness.

* * * * *

(g) * * *

(2) * * *

(iii) * * *

(B) [Reserved] For further guidance, *see* § 1.1017–1T(g)(2)(iii)(B).

* * * * *

■ **Par. 11.** Section 1.1017–1T is amended by revising paragraphs (c) through (i) to read as follows:

§ 1.1017–1T Basis reductions following a discharge of indebtedness (temporary).

* * * * *

(c) through (g)(2)(iii)(A) [Reserved]. For further guidance, see § 1.1017–1(c) through (g)(2)(iii)(A).

(g)(2)(iii)(B) *Taxpayer's requirement.* For taxable years beginning before January 1, 2003, statements described in § 1.1017–1(g)(2)(iii)(A) must be attached to a taxpayer's timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a). For taxable years beginning after December 31, 2002, taxpayers must retain the statements and keep them available for inspection in the manner required by § 1.6001–1(e), but are not required to attach the statements to their returns.

(g)(2)(iv) through (i) [Reserved]. For further guidance, *see* § 1.1017–1(g)(2)(iv) through (i).

■ **Par. 12.** Section 1.1368–1 is amended by revising paragraphs (f)(5)(iii) and (g)(2)(iii) to read as follows:

§ 1.1368–1 Distributions by S corporations.

* * * * *

(f) * * *

(5) * * *

(iii) [Reserved]. For further guidance, *see* § 1.1368–1T(f)(5)(iii).

* * * * *

(g) * * *

(2) * * *

(iii) [Reserved]. For further guidance, *see* § 1.1368–1T(g)(2)(iii).

* * * * *

■ **Par. 13.** Section 1.1368–1T is added to read as follows:

§ 1.1368–1T Distributions by S corporations (temporary).

(a) through (f)(5)(ii) [Reserved]. For further guidance, *see* § 1.1368–1(a) through (f)(5)(ii).

(f)(5)(iii) *Corporate statement regarding elections.* A corporation makes an election for a taxable year under § 1.1368–1(f) by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for that taxable year. In the statement, the corporation must identify the election it is making under § 1.1368–1(f) and must state that each shareholder consents to the election. In the case of elections for taxable years beginning before January 1, 2003, an officer of the corporation must sign under penalties of perjury the statement on behalf of the corporation. In the case of elections for taxable years beginning after December 31, 2002, the statement described in this paragraph (f)(5)(iii) shall be verified by signing the return. A statement of election to make a deemed dividend under § 1.1368–1(f) must include the amount of the deemed dividend that is distributed to each shareholder.

(f)(5)(iv) through (g)(2)(ii) [Reserved]. For further guidance, *see* § 1.1368–1(f)(5)(iv) through (g)(2)(ii).

(g)(2)(iii) *Time and manner of making election.* A corporation makes an election under § 1.1368–1(g)(2)(i) for a taxable year by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for a taxable year (without regard to the election under § 1.1368–1(g)(2)(i)). In the statement, the corporation must state that it is electing for the taxable year under § 1.1368–1(g)(2)(i) to treat the taxable year as if it consisted of separate taxable years. The corporation also must set forth facts in the statement relating to the qualifying disposition (*e.g.,* sale, gift, stock issuance, or redemption), and state that each shareholder who held stock in the corporation during the taxable year (without regard to the election under § 1.1368–1(g)(2)(i)) consents to this election. For purposes of this election, a shareholder of the corporation for the taxable year is a shareholder as described in section 1362(a)(2). A single election statement may be filed for all elections made under § 1.1368–1(g)(2)(i) for the taxable year. An election made under § 1.1368–1(g)(2)(i) of this section is irrevocable. In the case of elections for taxable years beginning before January 1, 2003, the statement through which a corporation makes an election under § 1.1368–1(g)(2)(i) must be signed by an officer of the corporation under penalties of perjury. In the case of elections for taxable years beginning after December 31, 2002, the statement described in the preceding sentence shall be verified by signing the return.

(g)(2)(iv) [Reserved]. For further guidance, *see* § 1.1368–1(g)(2)(iv).

■ **Par. 14.** Section 1.1377–1 is amended by revising paragraph (b)(5)(i)(C) to read as follows:

§ 1.1377–1 Pro rata share.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) [Reserved]. For further guidance, *see* § 1.1377–1T(b)(5)(i)(C).

* * * * *

■ **Par. 15.** Section 1.1377–1T is added to read as follows:

§ 1.1377–1T Pro rata share (temporary).

(a) through (b)(5)(i)(B) [Reserved]. For further guidance, *see* § 1.1377–1(a) through (b)(5)(i)(B).

(b)(5)(i)(C) The signature on behalf of the S corporation of an authorized officer of the corporation under penalties of perjury, except that for taxable years beginning after December 31, 2002, the election statement described in § 1.1377–1(b)(5)(i) shall be verified, and the requirement of this paragraph (b)(5)(i)(C) is satisfied, by the signature on the Form 1120S filed by the S corporation.

(b)(5)(i)(D) through (c) [Reserved]. For further guidance, *see* § 1.1377–1 (b)(5)(i)(D) through (c).

■ **Par. 16.** Section 1.1502–21 is amended by revising paragraphs (b)(2)(iii), (b)(3)(i) and (b)(3)(ii)(B) to read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(b) * * *

(2) * * *

(iii) [Reserved]. For further guidance, *see* § 1.1502–21T(b)(2)(iii).

* * * * *

(3) * * * (i) [Reserved]. For further guidance, *see* § 1.1502–21T(b)(3)(i).

(ii) * * * (A) * * *

(b)(3)(ii)(B) [Reserved]. For further guidance, *see* § 1.1502–21T(b)(3)(ii)(B).

* * * * *

■ **Par. 17.** Section 1.1502–21T is amended by revising paragraphs (b)(2)(iii) and (b)(3) through (b)(3)(ii)(B) to read as follows:

§ 1.1502–21T Net operating losses (temporary).

* * * * *

(b)(2)(iii) [Reserved]. For further guidance, *see* § 1.1502–21(b)(2)(iii).

* * * * *

(b)(3) *Special rules*—(i) *Election to relinquish carryback.* A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. Except as provided in paragraph (b)(3)(ii)(B) of this section, the election may not be made separately for any member (whether or not it remains a member), and must be made in a

separate statement entitled ''THIS IS AN ELECTION UNDER § 1.1502–21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT''. The statement must be filed with the group's income tax return for the consolidated return year in which the loss arises. If the consolidated return year in which the loss arises begins before January 1, 2003, the statement making the election must be signed by the common parent. If the consolidated return year in which the loss arises begins after December 31, 2002, the election may be made in an unsigned statement.

(b)(3)(ii) through (b)(3)(ii)(A) [Reserved]. For further guidance, *see* § 1.1502–21 (b)(3)(ii) through (b)(3)(ii)(A).

(B) *Acquisition of member from another consolidated group.* If one or more members of a consolidated group becomes a member of another consolidated group, the acquiring group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses attributable to the member, the portion of the carryback period for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election must be made in a separate statement entitled ''THIS IS AN ELECTION UNDER § 1.1502–21(b)(3)(ii)(B)(2) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members].'' The statement must be filed with the acquiring consolidated group's original income tax return for the year the corporation (or corporations) became a member. If the year in which the corporation (or corporations) became a member begins before January 1, 2003, the statement must be signed by the common parent and each of the members to which it applies. If the year in which the corporation (or corporations) became a member begins after December 31, 2002, the election may be made in an unsigned statement.

* * * * *

■ **Par. 18.** Section 1.1502–75 is amended by revising paragraph (h)(2) to read as follows:

§ 1.1502–75 Filing of consolidated returns.

* * * * *

(h) * * *

(2) [Reserved]. For further guidance, *see* § 1.1502–75T(h)(2).

* * * * *

■ **Par. 19.** Section 1.1502–75T is added to read as follows:

§ 1.1502–75T Filing of consolidated returns (temporary).

(a) through (h)(1) [Reserved]. For further guidance, *see* § 1.1502–75(a) through (h)(1).

(2) *Filing of Form 1122 for first year.* If, under the provisions of § 1.1502–75 (a)(1) , a group wishes to file a consolidated return for a taxable year, then a Form 1122 (''Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return'') must be executed by each subsidiary. For taxable years beginning before January 1, 2003, the executed Forms 1122 must be attached to the consolidated return for the taxable year. For taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by § 1.6001–1(e). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

(h)(3) through (k) [Reserved]. For further guidance, *see* § 1.1502–75(h)(3) through (k).

■ **Par. 20.** Section 1.1503–2 is amended by revising paragraphs (g)(2)(i), (g)(2)(iv)(B)(3)(iii) and (g)(2)(vi)(B) to read as follows:

§ 1.1503–2 Dual consolidated loss.

* * * * *

(g) * * *

(2) * * *

(i) [Reserved]. For further guidance, *see* § 1.1503–2T(g)(2)(i).

* * * * *

(iv) * * *

(B) * * *

(3) * * *

(iii) [Reserved]. For further guidance, *see* § 1.1503–2T(g)(2)(iv)(B)(*3*)(*iii*)

* * * * *

(vi) * * *

(B) [Reserved]. For further guidance, *see* § 1.1503–2T(g)(2)(vi)(B).

* * * * *

■ **Par. 21.** Section 1.1503–2T is added to read as follows:

§ 1.1503–2T Dual consolidated loss (temporary).

(a) through (g)(1) [Reserved]. For further guidance, *see* § 1.1503–2(a) through (g)(1).

(2) *Elective relief provision*—(i) *In general.* Paragraph (b) of this section shall not apply to a dual consolidated loss if the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner elects to be bound by the provisions of § 1.1503–2(g)(2) and this paragraph (g)(2). In order to elect relief under § 1.1503–2(g)(2) and this paragraph (g)(2), the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must attach to its timely filed U.S. income tax return for the taxable year in which the dual consolidated loss is incurred an agreement described in paragraph (g)(2)(i)(A) of this section. The agreement must be signed under penalties of perjury by the person who signs the return. For taxable years beginning after December 31, 2002, the agreement attached to the income tax return of the consolidated group, unaffiliated dual resident corporation or unaffiliated domestic owner pursuant to the preceding sentence may be an unsigned copy. If an unsigned copy is attached to the return, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must retain the original in its records in the manner specified by § 1.6001–1(e). The agreement must include the following items, in paragraphs labeled to correspond with the items set forth in paragraphs (g)(2)(i)(A) through (F) of this section:

(A) A statement that the document submitted is an election and an agreement under the provisions of § 1.1503–2(g)(2) of the Income Tax Regulations.

(B) The name, address, identifying number, and place and date of incorporation of the dual resident corporation, and the country or countries that tax the dual resident corporation on its worldwide income or on a residence basis, or, in the case of a separate unit, identification of the separate unit, including the name under which it conducts business, its principal activity, and the country in which its principal place of business is located.

(C) An agreement by the consolidated group, unaffiliated dual resident

corporation, or unaffiliated domestic owner to comply with all of the provisions of paragraphs (g)(2)(iii) through (vii) of § 1.1503–2 and this section.

(D) A statement of the amount of the dual consolidated loss covered by the agreement.

(E) A certification that no portion of the dual resident corporation's or separate unit's losses, expenses, or deductions taken into account in computing the dual consolidated loss has been, or will be, used to offset the income of any other person under the income tax laws of a foreign country.

(F) A certification that arrangements have been made to ensure that no portion of the dual consolidated loss will be used to offset the income of another person under the laws of a foreign country and that the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner will be informed of any such foreign use of any portion of the dual consolidated loss.

(g)(2)(ii) through (iv)(B)(*3*)(*ii*) [Reserved] For further guidance, *see* § 1.1503–2(g)(2)(ii) through (iv)(B)(3)(ii).

(g)(2)(iv)(B)(*3*)(*iii*) The unaffiliated domestic corporation or new consolidated group must file, with its timely filed income tax return for the taxable year in which the event described in § 1.1503–2(g)(2)(iv)(B)(*1*) or (*2*) occurs, an agreement described in paragraph (g)(2)(i) of this section (new (g)(2)(i) agreement), whereby it assumes the same obligations with respect to the dual consolidated loss as the corporation or consolidated group that filed the original (g)(2)(i) agreement with respect to that loss. The new (g)(2)(i) agreement must be signed under penalties of perjury by the person who signs the return and must include a reference to § 1.1503–2(g)(2)(iv)(B)(*3*)(*iii*) or this paragraph (g)(2)(iv)(B)(*3*)(*iii*). For taxable years beginning after December 31, 2002, the agreement attached to the return pursuant to the preceding sentence may be an unsigned copy. If an unsigned copy is attached to the return, the corporation or consolidated group must retain the original in its records in the manner specified by § 1.6001–1(e).

(g)(2)(iv)(C) through (vi)(A) [Reserved]. For further guidance, *see* § 1.1503–2(g)(2)(iv)(C) through (vi)(A).

(B) *Annual certification.* Except as provided in § 1.1503–2(g)(2)(vi)(C), until and unless Form 1120 or the Schedules thereto contain questions pertaining to dual consolidated losses, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must file with its income tax return for each of the 15 taxable years following the taxable year in which the dual consolidated loss is incurred a certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. For taxable years beginning before January 1, 2003, the annual certification must be signed under penalties of perjury by a person authorized to sign the agreement described in paragraph (g)(2)(i) of this section. For taxable years beginning after December 31, 2002, the certification is verified by signing the return with which the certification is filed. The certification for a taxable year must identify the dual consolidated loss to which it pertains by setting forth the taxpayer's year in which the loss was incurred and the amount of such loss. In addition, the certification must warrant that arrangements have been made to ensure that the loss will not be used to offset the income of another person under the laws of a foreign country and that the taxpayer will be informed of any such foreign use of any portion of the loss. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (g)(2)(vi)(B), the certifications for those years may be combined in a single document but each dual consolidated loss must be separately identified.

(g)(2)(vii) through (h) [Reserved]. For further guidance, *see* § 1.1503–2(g)(2)(vi) through (h).

■ **Par. 22.** Section 1.6038B–1 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(b)(1)(i) and (ii) [Reserved]. For further guidance, *see* § 1.6038B–1T(b)(1)(i) and (ii).

* * * * *

■ **Par. 23.** Section 1.6038B–1T is amended by revising paragraphs (a) through (b)(3) to read as follows:

§ 1.6038B–1T Reporting of certain transactions to foreign corporations (temporary).

(a) [Reserved]. For further guidance, *see* § 1.6038B–1(a).

(b) *Time and manner of reporting*—(1) *Ingeneral*—(i) *Reporting procedure.* Except for stock or securities qualifying under the special reporting rule of § 1.6038B–1(b)(2) , and certain exchanges described in section 354 (listed below), any U.S. person that makes a transfer described in section 6038B(a)(1)(A), 367(d) or (e), is required to report pursuant to section 6038B and the rules of § 1.6038B–1 and this section and must attach the required information to Form 926, ''Return by Transferor of Property to a Foreign Corporation.'' For special rules regarding cash transfers made in tax years beginning after February 5, 1999, see § 1.6038B–1(b)(3) and (g) . For purposes of determining a U.S. transferor that is subject to section 6038B, the rules of § 1.367(a)–1T(c) and § 1.367(a)–3(d) shall apply with respect to a transfer described in section 367(a), and the rules of § 1.367(a)–1T(c) shall apply with respect to a transfer described in section 367(d). Additionally, if in an exchange described in section 354, a U.S. person exchanges stock of a foreign corporation in a reorganization described in section 368(a)(1)(E), or a U.S. person exchanges stock of a domestic or foreign corporation for stock of a foreign corporation pursuant to an asset reorganization described in section 368(a)(1)(C), (D), or (F), that is not treated as an indirect stock transfer under section 367(a), then the U.S. person exchanging stock is not required to report under section 6038B. Notwithstanding any statement to the contrary on Form 926, the form and attachments must be attached to, and filed by the due date (including extensions) of the transferor's income tax return for the taxable year that includes the date of the transfer (as defined in § 1.6038B–1T(b)(4)). For taxable years beginning before January 1, 2003, any attachment to Form 926 required under the rules of this section is filed subject to the transferor's declaration under penalties of perjury on Form 926 that the information submitted is true, correct and complete to the best of the transferor's knowledge and belief. For taxable years beginning after December 31, 2002, Form 926 and any attachments shall be verified by signing the income tax return with which the form and attachments are filed.

(ii) *Reporting by corporate transferor.* For transfers by corporations in taxable years beginning before January 1, 2003, Form 926 must be signed by an authorized officer of the corporation if the transferor is not a member of an affiliated group under section 1504(a)(1) that files a consolidated Federal income tax return and by an authorized officer of the common parent corporation if the transferor is a member of such an affiliated group. For transfers by corporations in taxable years beginning after December 31, 2002, Form 926 shall be verified by signing the income tax return to which the form is attached.

(b)(2) through (b)(3) [Reserved]. For further guidance, *see* § 1.6038B–1(b)(2) through (b)(3).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 24.** The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 25.** Section 301.7701–3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 301.7701–3 Classification of certain business entities.

* * * * *

(c) * * * (1) * * *

(ii) [Reserved]. For further guidance, *see* § 301.7701–3T(c)(1)(ii).

* * * * *

■ **Par. 26.** Section 301.7701–3T is added to read as follows:

§ 301.7701–3T Classification of certain business entities (temporary).

(a) through (c)(1)(i) [Reserved]. For further guidance, *see* § 301.7701–3(a) through (c)(1)(i).

(ii) *Further notification of elections.* An eligible entity required to file a federal tax or information return for the taxable year for which an election is made under § 301.7701–3(c)(1)(i) must attach a copy of its Form 8832 to its federal tax or information return for that year. If the entity is not required to file a return for that year, a copy of its Form 8832 (''Entity Classification Election'') must be attached to the federal income tax or information return of any direct or indirect owner of the entity for the taxable year of the owner that includes the date on which the election was effective. An indirect owner of the entity does not have to attach a copy of the Form 8832 to its return if an entity in which it has an interest is already filing a copy of the Form 8832 with its return. If an entity, or one of its direct or indirect owners, fails to attach a copy of a Form 8832 to its return as directed in this section, an otherwise valid election under § 301.7701–3(c)(1)(i) will not be invalidated, but the non-filing party may be subject to penalties, including any applicable penalties if the federal tax or information returns are inconsistent with the entity's election under § 301.7701–3(c)(1)(i). In the case of returns for taxable years beginning after December 31, 2002, the copy of Form 8832 attached to a return pursuant to this paragraph (c)(1)(ii) is not required to be a signed copy.

(c)(1)(iii) through (h) [Reserved]. For further guidance, *see* § 301.7701–3(c)(1)(iii) through (h).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 27.** The authority citation for part 602 continues to read in part as follows:

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

■ **Par. 28.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.170A–11T	1545–1868
* * * * *	

Robert E. Wenzel,

Deputy Commission for Services and Enforcement.

Approved: December 2, 2003.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–31238 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule is designed to provide a fair and expeditious means of handling the case of an accused parole violator who is found to be mentally incompetent to proceed with a scheduled parole revocation hearing. Under the Commission's present rule, such a parolee is sent to the Bureau of Prisons for a mental health examination, with a report every six months, until the parolee regains sufficient competence to participate in a revocation hearing. This rule can result in the indefinite detention of the mentally incompetent parolee, without any provision for bringing the revocation matter to resolution. The interim rule authorizes the Commission to conduct a revocation hearing notwithstanding the parolee's lack of mental competency, so long as the Commission obtains a current mental health report, ensures that the parolee has counsel to present a defense, and takes the parolee's mental condition into account in its determination.

DATES: *Effective date:* January 20, 2004. Comments must be received by February 17, 2004.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: A recent case in the District of Columbia has illustrated the problems that can arise when the Commission finds that a parolee who is charged with parole violations is not mentally competent to participate a revocation hearing, and successive efforts to hold a revocation hearing are frustrated by the parolee's inability to regain competency. Other pending revocation cases potentially raise similar difficulties. Under the Commission's present regulation, 28 CFR 2.8, such a parolee must be kept in prison with a report as to his mental competency submitted every six months. A revocation hearing is attempted only when the mental health report indicates that the parolee may be competent to proceed. The regulation can result in indefinite delays in holding the revocation hearing, because the rule lacks any provision for resolving the parolee's situation.

The rule at § 2.8 is grounded, in part, on the policy judgment that the Commission cannot responsibly return accused parole violators to parole supervision solely by reason of their mental incompetency. This result would be incompatible with a primary purpose of parole, *i.e.*, to promote the reintegration of criminal offenders into society as law-abiding citizens through closely supervising their activities in the community and facilitating their rehabilitation. Effective supervision can only be carried out when parolees

maintain sufficient mental capacity to report as directed to their supervision officers, to follow instructions, to comply with the conditions of parole, and to avoid committing new crimes. Given the overriding public interest in preventing new crimes by released offenders, the Commission may justifiably require any parolee who lacks the mental capacity to function successfully on parole to complete his sentence in prison.

The mental incompetency of a defendant facing a criminal prosecution has a far different consequence. A defendant who is found unable to regain competence to stand trial in the foreseeable future cannot be incarcerated indefinitely and must be released, as mandated by *Jackson* v. *Indiana,* 406 U.S. 715 (1972). But this requirement does not apply to an accused parole violator, who is a convicted felon whose imprisonment will terminate with the expiration date of his sentence. Moreover, a parolee's mental condition is not a defense to revocation, though the parolee's condition is a factor for the decision-maker to consider in the disposition of the case. *E.g., United States* v. *Brown,* 899 F.2d 189 (2d Cir. 1990); *Steinberg* v. *Police Court of Albany, New York,* 610 F. 2d 449 (6th Cir. 1979). A parolee cannot, therefore, gain immunity from revocation of parole, and force the government to resort to civil commitment procedures, merely by reason of mental incompetency.

On the other hand, maintaining an accused parole violator on a potentially indefinite six-month reporting cycle without a revocation hearing, as permitted by the present rule, fails to serve the interest of both society and the parolee in seeing that parole violation charges are resolved in a reasonable time. Conducting a revocation hearing notwithstanding the parolee's mental incompetency is the appropriate solution because, in the final analysis, revocation of parole is remedial in nature. *E.g., United States* v. *Pinjuv,* 218 F.3d 1125, 1131 (9th Cir. 2000), *citing, Standlee* v. *Rhay,* 557 F.2d 1303, 1306 (9th Cir. 1977). Although it is obviously important for an accused parole violator to be able to participate meaningfully in the revocation process, the overriding consideration is that the Commission should avoid excessive delay in determining whether revocation is appropriate. A prolonged delay in holding the revocation hearing may result in the loss of witnesses, or the ability of witnesses to recall the events underlying a charged violation, which would impede the Commission's ability to make an accurate evaluation of the parolee's conduct and needs, and make an informed predictive judgment of the parolee's ability to live a law-abiding life. *Morrissey* v. *Brewer,* 408 U.S. 471, 480 (1972). It can also keep the parolee in custody unjustly where the violation charges would otherwise be dismissed.

If revocation is ordered, depending on the seriousness of the violations committed and the risk of new criminal behavior, the Commission can take such measures as are best suited to protect the public, which may include a reparole under conditions of supervision adequate to support the parolee's mental health needs. If the charges are dismissed, or revocation is otherwise not found appropriate, the Commission can return the parolee to the community with a better understanding of the needs that must be addressed to improve the parolee's chances for success.

Consequently, the Commission's revised regulation requires that, whenever a parolee appears to be incompetent to go forward with a revocation hearing, the hearing examiner must temporarily postpone the hearing to obtain a report concerning the parolee's competency from mental health professionals. If the incompetency appears at the probable cause hearing stage, the examiner (or Commission) will make a finding as to probable cause and, if probable cause is found, will schedule a revocation hearing to be held with such a report.

At the postponed revocation hearing, the hearing examiner will make a preliminary determination as to the parolee's competency before proceeding with the revocation hearing. But the hearing examiner will proceed with the revocation hearing even if the examiner determines that the parolee is mentally incompetent to participate in the hearing. Under the interim rule, a finding of incompetency is not a reason for ordering further postponements or for canceling the hearing. In such a case, the purpose of the mental competency determination is to inform the examiner of the parolee's condition, so that the examiner can ensure that both a fair revocation hearing and a reasonable decision results.

In drafting this revised regulation, the Commission has taken account of the possibility that holding a revocation hearing in the case of an incompetent parolee could result in an increased risk of erroneous fact-finding. This risk will be controlled by the provision that any mentally incompetent parolee must be afforded representation by counsel at the revocation hearing. Counsel will be expected to investigate the charges by speaking to witnesses, family members, and others with relevant information. Counsel will be permitted to present any substantial defense to the charges which the circumstances suggest, even if the parolee is not able to testify or give counsel meaningful assistance. This is not an unfair expectation because counsel is not tasked with preparing a defense in a criminal trial under the standard of ''beyond a reasonable doubt.'' Counsel is only tasked with preparing a defense in an informal administrative hearing, under the lesser standard of the ''preponderance of the evidence,'' whereby counsel need only provide the Commission with the explanation of the facts which ''best accords with reason and probability.'' *See* 28 CFR 2.19(c). As the Supreme Court stated in *Morrissey* v. *Brewer, supra,* 408 U.S. at 489, a parole revocation hearing is not a criminal trial ''in any sense.''

Therefore, the absence of any readily evident defenses to the alleged parole violations will, in most cases, result in counsel emphasizing factors in mitigation. Even though a case may occur in which a parolee cannot communicate to counsel some defense that is known only to the parolee, it is still preferable for the Commission to hold a hearing and make the best decision it can, as opposed to postponing the hearing until such time as the parolee is able to regain his competence.

In sum, the only requirement of due process in such a case is that the Commission must take the parolee's mental condition fully into account in conducting the revocation hearing and making its decision. *Pierce* v. *State Department of Social and Health Services,* 646 P. 2d 1382 (S. Ct. Wash. 1982) (*en banc*). Before making a finding as to whether the parolee violated parole as charged, the Commission will consider the parolee's difficulty in communicating his version of the facts, and weigh that factor in the balance in assessing the probabilities under 28 CFR 2.19(c). If the Commission finds that violations have occurred, the Commission will consider the parolee's inability to provide a coherent explanation of the reasons for his misconduct in determining whether revocation is the appropriate remedy.

Because this is a rule of procedure only, and implementation of the rule at the earliest opportunity is necessary for the Commission to be able to resolve any potential delays in its revocation caseload, this rule will go into effect as an interim rule with request for comments, in contrast to proposals for rulemaking on substantive matters such as paroling policy.

Implementation

The amended rule will take effect January 20, 2004, and will apply to all cases, federal and District of Columbia, including District of Columbia offenders on supervised release.

Executive Order 12866

The U.S. Parole Commission has determined that this interim rule does not constitute a significant rule within the meaning of Executive Order 12866.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to section 804 (3) (c) of the Congressional Review Act.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Interim Rule

■ Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203 (a) (1) and 4204 (a) (6).

■ 2. Amend § 2.8 by revising paragraph (c) and adding paragraph (e). The revised and added texts read as follows:

§ 2.8 Mental competency proceedings.

* * * * *

(c) Whenever the hearing examiner(s) or designated official determine that a prisoner is mentally incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Commissioner for review.

(1) In the case of a prisoner, if the Regional Commissioner concurs with their findings, the Commissioner shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner has recovered sufficiently to understand the proceedings. The Regional Commissioner shall require a progress report on the mental health of the prisoner at least every six months. When the Regional Commissioner determines that the prisoner has recovered sufficiently, the Commissioner shall reschedule the hearing for the earliest feasible date.

(2) In the case of a parolee in a revocation proceeding, the Regional Commissioner shall postpone the revocation hearing and order that the parolee be given a mental health examination in a suitable facility of the Bureau of Prisons or the District of Columbia. The postponed revocation hearing shall be held within 60 days, or as soon as a satisfactory mental health report is submitted. The Regional Commissioner shall order that appointment of counsel be sought in any case where the parolee does not have counsel for the revocation hearing. If the parolee's mental incompetency is raised at a preliminary interview or probable cause hearing, the Commission (or hearing official) will make a determination of probable cause and, if probable cause is found, schedule a revocation hearing as provided in this paragraph.

* * * * *

(e) At a postponed revocation hearing under this section, the hearing examiner shall make a preliminary determination as to the parolee's mental competency, taking into account all available mental health reports, any evidence submitted on the parolee's behalf, any report from counsel as to counsel's ability to communicate with the parolee, and the parolee's own responses to the examiner's questioning.

(1) If the hearing examiner determines the parolee to be mentally competent, the examiner shall conduct the revocation hearing. If counsel has previously asserted the parolee's incompetence, the examiner shall offer counsel a brief recess to consult with the parolee before proceeding.

(2) If the hearing examiner determines the parolee to be mentally incompetent, the examiner shall conduct the revocation hearing, and shall take into full account the parolee's mental condition in determining the facts and recommending a decision as to revocation and reparole.

(3) If the Commission revokes parole, the Commission may grant reparole conditioned on the parolee's acceptance into a particular type of mental health program prior to release from prison, or may grant reparole with a special condition of supervision that requires appropriate mental health treatment, including medication. In cases where no other option appears appropriate, the Commission may grant reparole conditioned upon the parolee's voluntary self-commitment to a mental health institution until such time as the parolee has sufficiently recovered for the Commission to permit the parolee's return to supervision.

(4) If the Commission finds that the parolee did not commit the charged violations of parole, but also finds that the parolee is unable to fulfill the normal obligations of a parolee by reason of his mental condition, the Commission may reinstate the parolee to parole with any appropriate special condition, including the special condition, if necessary, that the parolee voluntarily commit himself to a mental institution until such time as the parolee has sufficiently recovered for the Commission to permit a return to supervision.

Dated: December 12, 2003.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 03–31293 Filed 12–18–03; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–172]

Drawbridge Operation Regulations; Loxahatchee River, Palm Beach County, FL

AGENCY: U.S. Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Florida East Coast Railway bridge across the Loxahatchee River, mile 1.2, Jupiter, Florida. This deviation allows the bridge to remain in the closed position from 7 p.m. to 7 a.m. each day from December 10, 2003 until December 19, 2003 for repairs.

DATES: This deviation is effective from 7 p.m. on December 10 until 7 a.m. on December 19, 2003.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–03–172] will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida 33131–3050 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The Florida East Coast Railway bridge across the Loxahatchee River, Jupiter, Florida, is a single leaf bascule bridge with a vertical clearance of 4 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 40 feet. The current operating regulation in 33 CFR 117.300 requires that the bridge is not constantly tended. The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass. When a train approaches, the lights go to flashing red and a horn starts four blasts, pauses, and then continues four blasts. After an eight minute delay, the draw lowers and locks, providing the scanning equipment reveals nothing under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied. After the train has cleared, the draw opens and the lights return to flashing green.

On October 30, 2003, the bridge owner, Florida East Coast Railroad, requested a deviation from the current operating regulations to allow the owner and operator to keep this bridge in the closed position during certain times each day to facilitate repairs. The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.300 to complete repairs to the bridge. Under this deviation the Florida East Coast Railway bridge, across the Loxahatchee River, mile 1.2, Jupiter, Florida, need not open from 7 p.m. to 7 a.m., each day, from December 10, 2003 until December 19, 2003.

Dated: December 10, 2003.

Greg Shapley,

Chief, Bridge Branch, Seventh Coast Guard District.

[FR Doc. 03–31243 Filed 12–18–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustment—Unit 22(A)

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustment.

SUMMARY: This provides notice of the Federal Subsistence Board's management action to protect a declining moose population in Unit 22(A). This action provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 27, 2003. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2003 regulatory year.

DATES: This action is effective December 4, 2003, through January 31, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Leader, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2003 hunting seasons, harvest limits, and methods and means were

published on June 27, 2003, (68 FR 38464). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG) and the Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Federal Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

This adjustment is necessary because of the need to protect a declining moose population in a portion of Unit 22. This action is authorized and in accordance with 50 CFR 100.19(d-e) and 36 CFR 242.19(d-e).

Unit 22(A)—Moose

In 2003 recruitment surveys were completed by ADF&G and BLM in the Golsovia River drainage and on the main stems of the Unalakleet, Shaktoolik and Ungalik river drainages for comparison to similar Unit 22(A) surveys completed in 2000. In all drainages surveyed, except the Golsovia, considerably fewer moose were seen in 2003 than in 2000. This information points to a substantial decline in moose numbers in Unit 22(A) especially the population north of the Golsovia River. Current Federal regulations provide opportunity to harvest bull moose in the affected area December 1 through January 31. This Board action closes the moose season in a portion of Unit 22(A) north of the Golsovia River drainage, closes the winter season in the remainder of Unit 22(A) at the end of December, and changes the harvest limit in remainder of Unit 22(A) to antlered bulls only. ADF&G has executed an Emergency Order for a similar adjustment of the State moose season on private lands in response to the ongoing population declines.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for this adjustment is impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate measures could seriously affect the continued viability of wildlife populations, adversely impact subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of this action and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closure do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as firearm, ammunition, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and 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.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to

warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: December 3, 2003.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: December 3, 2003.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 03–31290 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL06

Reasonable Charges for Medical Care or Services; 2003 Methodology Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) medical regulations concerning ''reasonable charges'' for medical care or services provided or furnished by VA to a veteran:

- For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;
- For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or
- For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations contain methodologies designed to establish VA charges that replicate, insofar as possible, the 80th percentile of community charges, adjusted to the market areas in which VA facilities are located, and trended forward to the time period during which the charges will be used. This document amends the regulations regarding VA's reasonable charges methodologies for the following purposes: To establish charges for medical care, procedures, services, durable medical equipment (DME), drugs, injectables, medical items, and supplies for which we previously did not have charges; to replace certain charges previously based on VA costs with charges based on community charges; to establish separate charges for medical care, procedures, services, DME, drugs, injectables, medical items, and supplies whose charges were previously combined with other charges; to bring our charge structures and associated billing practices closer to industry standard charge structures and billing practices; and to provide certain clarifications.

DATES: This final rule is effective December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Stephanie Mardon, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0362. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on October 2, 2003 (68 FR 56876), we proposed to amend VA's medical regulations as summarized in this document and discussed in full in the proposed rule. We provided a comment period that ended on November 3, 2003. We received one comment to the proposed rule, which we are now adopting as a final rule with minor revisions based on the public comment, plus clarifications and minor technical changes.

The comment focused on the use of the term ''medically directed'' as it applies to VA charges for anesthesia services. The commenter pointed out that under the Medicare program, the term ''medically directed'' has specific meaning having to do with Medicare payments to anesthesiologists for providing certain services. The commenter also pointed out that Medicare does not require that Certified Registered Nurse Anesthetists (CRNAs) be medically directed by anesthesiologists while providing anesthesia services. The commenter stated that Medicare and other primary insurers recognize the terms ''personally performed'' and ''non-medically directed,'' and recommended that these terms be used in the VA regulation. We appreciate this information, and we have revised paragraph (g) of the regulation to incorporate the recommended language.

The commenter also recommended that VA establish an ''Anesthesia Reimbursement Working Group'' to advise VA regarding methodology for determining professional charges and values for anesthesia services. Our response to this recommendation is that we believe our current methodology for determining professional charges and values for anesthesia services is appropriate, and that establishing the indicated working group is not necessary at this time.

In the proposed rule, we identified the Internet site of the Veterans Health Administration Chief Business Office as *http://www.va.gov/revenue.* In connection with ongoing improvements to this Internet site, the address has been changed to *http://www.va.gov/cbo.* We have made this change in the two places in the regulation in which it occurs, in paragraphs (a)(2) and (a)(3), indicating that this is the current address of this Internet site.

In the proposed rule, we defined ''geographic area'' to mean ''a three-digit ZIP Code area.'' We are now adding a clarification to that definition to indicate that the three-digit ZIP Codes referred to are the first three digits of standard U.S. Postal Service ZIP Codes.

Based on the rationale set forth in the proposed rule and in this document, we now adopt the proposed rule as a final rule with the minor revisions, clarifications, and minor technical changes indicated.

Previous Interim Final Rule

This document supercedes our previous interim final rule with comment period, ''Reasonable Charges for Medical Care or Services; 2003 Update,'' published in the **Federal Register** on April 29, 2003 (68 FR 22966, RIN 2900–AL57). The comment period ended on June 30, 2003. We did not receive any comments in response to the April 29, 2003, interim final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains provisions at 38 CFR 17.101(a)(4) constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). The Office of Management and Budget (OMB) has approved the information collection requirements for § 17.101(a)(4) under OMB control number 2900–0606.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule affects mainly large insurance companies, and where small entities are involved, they are not impacted significantly since most of their business is not with VA. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: December 10, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

■ 2. Section 17.101 is revised to read as follows:

§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.

(a)(1) *General.* This section covers collection or recovery by VA, under 38 U.S.C. 1729, for medical care or services provided or furnished to a veteran:

(i) For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

(ii) For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

(iii) For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

(2) *Methodologies.* Based on the methodologies set forth in this section, the charges billed will include the following types of charges, as appropriate: Acute inpatient facility charges; skilled nursing facility/sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. In addition, the charges billed for prescription drugs not administered during treatment will be based on VA costs in accordance with the methodology set forth in § 17.102. Data for calculating actual charge amounts based on the methodologies set forth in this section will either be published in a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo,* under ''Charge Data.'' For care for which VA has established a charge, VA will bill using its most recent published or posted charge. For care for which VA has not established a charge, VA will bill according to the methodology set forth in paragraph (a)(8) of this section.

(3) *Data sources.* In this section, data sources are identified by name. The specific editions of these data sources used to calculate actual charge amounts, and information on where these data sources may be obtained, will be presented along with the data for calculating actual charge amounts, either in notices in the **Federal Register** or on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo,* under ''Charge Data.''

(4) *Amount of recovery or collection—third party liability.* A third-party payer liable under a health plan contract has the option of paying either the billed charges described in this section or the amount the health plan demonstrates is the amount it would pay for care or services furnished by providers other than entities of the United States for the same care or services in the same geographic area. If the amount submitted by the health plan for payment is less than the amount billed, VA will accept the submission as payment, subject to verification at VA's discretion in accordance with this section. A VA employee having responsibility for collection of such charges may request that the third party health plan submit evidence or

information to substantiate the appropriateness of the payment amount (*e.g.*, health plan or insurance policies, provider agreements, medical evidence, proof of payment to other providers in the same geographic area for the same care and services VA provided).

(5) *Definitions.* For purposes of this section:

APC means Medicare Ambulatory Payment Classification.

CMS means the Centers for Medicare and Medicaid Services.

CPI–U means Consumer Price Index—All Urban Consumers.

CPT code and *CPT procedure code* mean Current Procedural Terminology code, a five-digit identifier defined by the American Medical Association for a specified physician service or procedure.

DME means Durable Medical Equipment.

DRG means Diagnosis Related Group.

Geographic area means a three-digit ZIP Code area, where three-digit ZIP Codes are the first three digits of standard U.S. Postal Service ZIP Codes.

HCPCS code means a Healthcare Common Procedure Coding System Level II identifier, consisting of a letter followed by four digits, defined by CMS for a specified physician service, procedure, test, supply, or other medical service.

ICU means Intensive Care Unit, including coronary care units.

MDR means Medical Data Research, a medical charge database published by Ingenix, Inc.

MedPAR means the Medicare Provider Analysis and Review file.

Non-provider-based means a VA health care entity (such as a small VA community-based outpatient clinic) that functions as the equivalent of a doctor's office or for other reasons does not meet CMS provider-based criteria, and, therefore, is not entitled to bill outpatient facility charges.

Provider-based means the outpatient department of a VA hospital or any other VA health care entity that meets CMS provider-based criteria. Provider-based entities are entitled to bill outpatient facility charges.

RBRVS means Resource-Based Relative Value Scale.

RVU means Relative Value Unit.

Unlisted procedures mean procedures, services, items, and supplies that have not been defined or specified by the American Medical Association or CMS, and the CPT and HCPCS codes used to report such procedures, services, items, and supplies.

(6) *Provider-based and non-provider-based entities and charges.* Each VA health care entity (medical center, hospital, community-based outpatient clinic, independent outpatient clinic, etc.) is designated as either provider-based or non-provider-based. Provider-based entities are entitled to bill outpatient facility charges; non-provider-based entities are not. The charges for physician and other professional services provided at non-provider-based entities will be billed as professional charges only. Professional charges for both provider-based entities and non-provider-based entities are produced by the methodologies set forth in this section, with professional charges for provider-based entities based on facility practice expense RVUs, and professional charges for non-provider-based entities based on non-facility practice expense RVUs.

(7) *Charges for medical care or services provided by non-VA providers at VA expense.* When medical care or services are furnished at the expense of the VA by non-VA providers, the charges billed for such care or services will be the higher of the charges determined according to this section, or the amount VA paid to the non-VA provider.

(8) *Charges for medical care or services for which VA does not have an established charge.* When medical care or services are provided or furnished at VA expense by either VA or non-VA providers, and VA does not have an established charge for such care or services, then the charges billed for such care or services will be according to the first of the following subparagraphs that applies:

(i) In the event that a new identifier (DRG, CPT code, or HCPCS code) is assigned to a particular type or item of medical care or service, then until such time as VA establishes a charge for the new identifier, VA's charge for such care or service will be VA's most recent established charge for the identifier previously assigned to that type or item of medical care or service; otherwise,

(ii) In the event that the medical care or service is provided or furnished at VA expense by a non-VA provider, then VA's charge for such care or service will be the amount VA paid to the non-VA provider; otherwise,

(iii) VA's charges for prosthetic devices and durable medical equipment will be VA's actual cost; otherwise,

(iv) If a Medicare allowed charge amount can be determined for the care or service, then VA's charge will be the Medicare participating provider allowed charge amount geographically adjusted using the applicable geographic area adjustment factors determined pursuant to this section; otherwise,

(v) If a charge cannot be established under paragraphs (a)(8)(i) through (iv) of this section, then VA will not charge for the care or service under this section.

(b) *Acute inpatient facility charges.* When VA provides or furnishes acute inpatient services within the scope of care referred to in paragraph (a)(1) of this section, acute inpatient facility charges billed for such services will be determined in accordance with the provisions of this paragraph. Acute inpatient facility charges consist of per diem charges for room and board and for ancillary services that vary by geographic area and by DRG. These charges are calculated as follows:

(1) *Formula.* For each acute inpatient stay, or portion thereof, for which a particular DRG assignment applies, the total acute inpatient facility charge is the sum of the applicable charges determined pursuant to paragraphs (b)(1)(i), (ii), and (iii) of this section. For purposes of this section, standard room and board days and ICU room and board days are mutually exclusive: VA will bill either a standard room and board per diem charge or an ICU room and board per diem charge, as applicable, for each day of a given acute inpatient stay.

(i) *Standard room and board charges.* Multiply the nationwide standard room and board per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific standard room and board per diem charge. Multiply this amount by the number of days for which standard room and board charges apply to obtain the total acute inpatient facility standard room and board charge.

(ii) *ICU room and board charges.* Multiply the nationwide ICU room and board per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific ICU room and board per diem charge. Multiply this amount by the number of days for which ICU room and board per diem charges apply to obtain the total acute inpatient facility ICU room and board charge.

(iii) *Ancillary charges.* Multiply the nationwide ancillary per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific ancillary per diem charge. Multiply this amount by the number of days of acute inpatient care to obtain the

total acute inpatient facility ancillary charge.

Note to paragraph (b)(1): If there is a change in a patient's condition and/or treatment during a single acute inpatient stay such that the DRG assignment changes (for example, a psychiatric patient who develops a medical or surgical problem), then calculations of acute inpatient facility charges will be made separately for each DRG, according to the number of days of care applicable for each DRG, and the total acute inpatient facility charge will be the sum of the total acute inpatient facility charges for the different DRGs.

(2) *Per diem charges.* To establish a baseline, two nationwide average per diem amounts for each DRG are calculated, one from the MedPAR file and one from the MedStat claims database, a database of nationwide commercial insurance claims. Average per diem charges are calculated based on all available charges, except for care reported for emergency room, ambulance, professional, and observation care. These two data sources may report charges for two differing periods of time; when this occurs, the data source charges with the earlier center date are trended forward to the center date of the other data source, based on changes to the inpatient hospital services component of the CPI–U. Results obtained from these two data sources are then combined into a single weighted average per diem charge for each DRG. The resulting charge for each DRG is then separated into its two components, a room and board component and an ancillary component, with the per diem charge for each component calculated by multiplying the weighted average per diem charge by the corresponding percentage determined pursuant to paragraph (b)(2)(i) of this section. The room and board per diem charge is further differentiated into a standard room and board per diem charge and an ICU room and board per diem charge by multiplying the average room and board charge by the corresponding DRG-specific ratios determined pursuant to paragraph (b)(2)(ii) of this section. The resulting per diem charges for standard room and board, ICU room and board, and ancillary services for each DRG are then each multiplied by the final ratio determined pursuant to paragraph (b)(2)(iii) of this section to reflect the nationwide 80th percentile charges. Finally, the resulting amounts are each trended forward from the center date of the trended data sources to the effective time period for the charges, as set forth in paragraph (b)(2)(iv) of this section. The results constitute the nationwide 80th percentile standard room and board, ICU room and board, and ancillary per diem charges.

(i) *Room and board charge and ancillary charge component percentages.* Using only those cases from the MedPAR file for which a distinction between room and board charges and ancillary charges can be determined, the percentage of the total charges for room and board compared to the combined total charges for room and board and ancillary services, and the percentage of the total charges for ancillary services compared to the combined total charges for room and board and ancillary services, are calculated by DRG.

(ii) *Standard room and board per diem charge and ICU room and board per diem charge ratios.* Using only those cases from the MedPAR file for which a distinction between room and board and ancillary charges can be determined, overall average per diem room and board charges are calculated by DRG. Then, using the same cases, an average standard room and board per diem charge is calculated by dividing total non-ICU room and board charges by total non-ICU room and board days. Similarly, an average ICU room and board per diem charge is calculated by dividing total ICU room and board charges by total ICU room and board days. Finally, ratios of standard room and board per diem charges *to* average overall room and board per diem charges are calculated by DRG, as are ratios of ICU room and board per diem charges *to* average overall room and board per diem charges.

(iii) *80th percentile.* Using cases from the MedPAR file with separately identifiable semi-private room rates, the ratio of the day-weighted 80th percentile semi-private room and board per diem charge *to* the average semi-private room and board per diem charge is obtained for each geographic area. The geographic area-based ratios are averaged to obtain a final 80th percentile ratio.

(iv) *Trending forward.* 80th percentile charges for each DRG, obtained as described in paragraph (b)(2) of this section, are trended forward based on changes to the inpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the center date of the trended data sources through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) *Geographic area adjustment factors.* For each geographic area, the average per diem room and board charges and ancillary charges from the MedPAR file are calculated for each DRG. The DRGs are separated into two groups, surgical and non-surgical. For each of these groups of DRGs, for each geographic area, average room and board per diem charges and ancillary per diem charges are calculated, weighted by nationwide VA discharges and by average lengths of stay from the combined MedPAR file and MedStat claims database. This results in four average per diem charges for each geographic area: room and board for surgical DRGs, ancillary for surgical DRGs, room and board for non-surgical DRGs, and ancillary for non-surgical DRGs. Four corresponding national average per diem charges are obtained from the MedPAR file, weighted by nationwide VA discharges and by average lengths of stay from the combined MedPAR file and MedStat claims database. Four geographic area adjustment factors are then calculated for each geographic area by dividing each geographic area average per diem charge by the corresponding national average per diem charge.

(c) *Skilled nursing facility/sub-acute inpatient facility charges.* When VA provides or furnishes skilled nursing/sub-acute inpatient services within the scope of care referred to in paragraph (a)(1) of this section, skilled nursing facility/sub-acute inpatient facility charges billed for such services will be determined in accordance with the provisions of this paragraph. The skilled nursing facility/sub-acute inpatient facility charges are per diem charges that vary by geographic area. The facility charges cover care, including room and board, nursing care, pharmaceuticals, supplies, and skilled rehabilitation services (*e.g.*, physical therapy, inhalation therapy, occupational therapy, and speech-language pathology), that is provided in a nursing home or hospital inpatient setting, is provided under a physician's orders, and is performed by or under the general supervision of professional personnel such as registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech-language pathologists, and audiologists. These charges are calculated as follows:

(1) *Formula.* For each stay, multiply the nationwide per diem charge determined pursuant to paragraph (c)(2) of this section by the appropriate geographic area adjustment factor

determined pursuant to paragraph (c)(3) of this section. The result constitutes the area-specific per diem charge. Finally, multiply the area-specific per diem charge by the number of days of care to obtain the total skilled nursing facility/sub-acute inpatient facility charge.

(2) *Per diem charge.* To establish a baseline, a nationwide average per diem billed charge is calculated based on charges reported in the MedPAR skilled nursing facility file. For this purpose, the following MedPAR charge categories are included: room and board (private, semi-private, and ward), physical therapy, occupational therapy, inhalation therapy, speech-language pathology, pharmacy, medical/surgical supplies, and ''other'' services. The following MedPAR charge categories are excluded from the calculation of the per diem charge and will be billed separately, using the charges determined as set forth in other applicable paragraphs of this section, when these services are provided to skilled nursing patients or sub-acute inpatients: ICU and CCU room and board, laboratory, radiology, cardiology, dialysis, operating room, blood and blood administration, ambulance, MRI, anesthesia, durable medical equipment, emergency room, clinic, outpatient, professional, lithotripsy, and organ acquisition services. The resulting average per diem billed charge is then multiplied by the 80th percentile adjustment factor determined pursuant to paragraph (c)(2)(i) of this section to obtain a nationwide 80th percentile charge level. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (c)(2)(ii) of this section.

(i) *80th percentile adjustment factor.* Using the MedPAR skilled nursing facility file, the ratio of the day-weighted 80th percentile room and board per diem charge to the day-weighted average room and board per diem charge is obtained for each geographic area. The geographic area-based ratios are averaged to obtain the 80th percentile adjustment factor.

(ii) *Trending forward.* The 80th percentile charge is trended forward based on changes to the inpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charge.

(3) *Geographic area adjustment factors.* The average billed per diem charge for each geographic area is calculated from the MedPAR skilled nursing facility file. This amount is divided by the nationwide average billed charge calculated in paragraph (c)(2) of this section. The geographic area adjustment factor for charges for each VA facility is the ratio for the geographic area in which the facility is located.

(d) *Partial hospitalization facility charges.* When VA provides or furnishes partial hospitalization services that are within the scope of care referred to in paragraph (a)(1) of this section, the facility charges billed for such services will be determined in accordance with the provisions of this paragraph. Partial hospitalization facility charges are per diem charges that vary by geographic area. These charges are calculated as follows:

(1) *Formula.* For each partial hospitalization stay, multiply the nationwide per diem charge determined pursuant to paragraph (d)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (d)(3) of this section. The result constitutes the area-specific per diem charge. Finally, multiply the area-specific per diem charge by the number of days of care to obtain the total partial hospitalization facility charge.

(2) *Per diem charge.* To establish a baseline, a nationwide median per diem billed charge is calculated based on charges associated with partial hospitalization from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. That median per diem billed charge is then multiplied by the 80th percentile adjustment factor determined pursuant to paragraph (d)(2)(i) of this section to obtain a nationwide 80th percentile charge level. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (d)(2)(ii) of this section.

(i) *80th percentile adjustment factor.* The 80th percentile adjustment factor for partial hospitalization facility charges is the same as that computed for skilled nursing facility/sub-acute inpatient facility charges under paragraph (c)(2)(i) of this section.

(ii) *Trending forward.* The 80th percentile charge is trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (d)(2) of this section.

(3) *Geographic area adjustment factors.* The geographic area adjustment factors for partial hospitalization facility charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(e) *Outpatient facility charges.* When VA provides or furnishes outpatient facility services that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for outpatient facility services vary by geographic area and by CPT/HCPCS code. These charges apply in the situations set forth in paragraph (e)(1) of this section and are calculated as set forth in paragraph (e)(2) of this section.

(1) *Settings and circumstances in which outpatient facility charges apply.* Outpatient facility charges consist of facility charges for procedures, diagnostic tests, evaluation and management services, and other medical services, items, and supplies provided in the following settings and circumstances:

(i) Outpatient departments and clinics at VA medical centers;

(ii) Other VA provider-based entities; and

(iii) VA non-provider-based entities, for procedures and tests for which no corresponding professional charge is established under the provisions of paragraph (f) of this section.

(2) *Formula.* For each outpatient facility charge CPT/HCPCS code, multiply the nationwide 80th percentile charge determined pursuant to paragraph (e)(3) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (e)(4) of this section. The result constitutes the area-specific outpatient facility charge. When multiple surgical procedures are performed during the same outpatient encounter by a provider or provider team, the outpatient facility charges for such procedures will be reduced as set forth in paragraph (e)(5) of this section.

(3) *Nationwide 80th percentile charges by CPT/HCPCS code.* For each CPT/HCPCS code for which outpatient facility charges apply, the nationwide

80th percentile charge is calculated as set forth in either paragraph (e)(3)(i) or (e)(3)(ii) of this section. The resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (e)(3)(iii) of this section. The results constitute the nationwide 80th percentile outpatient facility charges by CPT/HCPCS code.

(i) *Nationwide 80th percentile charges for CPT/HCPCS codes which have APC assignments.* Using the outpatient facility charges reported in the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample, claim records are selected for which all charges can be assigned to an APC. Using this subset of the 5 percent Sample data, nationwide median charge *to* Medicare APC payment amount ratios, by APC, and nationwide 80th percentile *to* median charge ratios, by APC, are computed according to the methodology set forth in paragraphs (e)(3)(i)(A) and (e)(3)(i)(B) of this section, respectively. The product of these two ratios by APC is then computed, resulting in a composite nationwide 80th percentile charge *to* Medicare APC payment amount ratio. This ratio is then compared to the alternate nationwide 80th percentile charge *to* Medicare APC payment amount ratio computed in paragraph (e)(3)(i)(C) of this section, and the lesser amount is selected and multiplied by the current Medicare APC payment amount. The resulting product is the APC-specific nationwide 80th percentile charge amount for each applicable CPT/HCPCS code.

(A) *Nationwide median charge to Medicare APC payment amount ratios.* For each CPT/HCPCS code, the ratio of median billed charge *to* Medicare APC payment amount is determined. The weighted average of these ratios for each APC is then obtained, using the reported 5 percent Sample frequencies as weights. In addition, corresponding ratios are calculated for each of the APC categories set forth in paragraph (e)(3)(i)(D) of this section, again using the reported 5 percent Sample frequencies as weights. For APCs where the 5 percent Sample frequencies provide a statistically credible result, the APC-specific weighted average nationwide median charge *to* Medicare APC payment amount ratio so obtained is accepted without further adjustment. However, if the 5 percent Sample data do not produce statistically credible results for any specific APC, then the APC category-specific ratio is applied for that APC.

(B) *Nationwide 80th percentile to median charge ratios.* For each CPT/HCPCS code, a geographically normalized nationwide 80th percentile billed charge amount is divided by a similarly normalized nationwide median billed charge amount. The weighted average of these ratios for each APC is then obtained, using the reported 5 percent Sample frequencies as weights. In addition, corresponding ratios are calculated for each of the APC categories set forth in paragraph (e)(3)(i)(D) of this section, again using the reported 5 percent Sample frequencies as weights. For APCs where the 5 percent Sample frequencies provide a statistically credible result, the APC-specific weighted average nationwide 80th percentile *to* median charge ratio so obtained is accepted without further adjustment. However, if the 5 percent Sample data do not produce statistically credible results for any specific APC, then the APC category-specific ratio is applied for that APC.

(C) *Alternate nationwide 80th percentile charge to Medicare APC payment amount ratios.* A minimum 80th percentile charge *to* Medicare APC payment amount ratio is set at 2.0 for APCs with Medicare APC payment amounts of $25 or less. A maximum 80th percentile charge *to* Medicare APC payment amount ratio is set at 6.5 for APCs with Medicare APC payment amounts of $10,000 or more. Using linear interpolation with these endpoints, the alternate APC-specific nationwide 80th percentile charge *to* Medicare APC payment amount ratio is then computed, based on the Medicare APC payment amount.

(D) *APC categories for the purpose of establishing 80th percentile to median factors.* For the purpose of the statistical methodology set forth in paragraph (e)(3)(i) of this section, APCs are assigned to the following APC categories:

(*1*) Radiology.

(*2*) Drugs.

(*3*) Office, Home, and Urgent Care Visits.

(*4*) Cardiovascular.

(*5*) Emergency Room Visits.

(*6*) Outpatient Psychiatry, Alcohol and Drug Abuse.

(*7*) Pathology.

(*8*) Surgery.

(*9*) Allergy Immunotherapy, Allergy Testing, Immunizations, and Therapeutic Injections.

(*10*) All APCs not assigned to any of the above groups.

(ii) *Nationwide 80th percentile charges for CPT/HCPCS codes which do not have APC assignments.* Nationwide 80th percentile billed charge levels by CPT/HCPCS code are computed from the outpatient facility component of the MDR database, from the MedStat claims database, and from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. If the MDR database contains sufficient data to provide a statistically credible 80th percentile charge, then that result is retained for this purpose. If the MDR database does not provide a statistically credible 80th percentile charge, then the result from the MedStat database is retained for this purpose, provided it is statistically credible. If neither the MDR nor the MedStat databases provide statistically credible results, then the nationwide 80th percentile billed charge computed from the 5 percent Sample data is retained for this purpose. The nationwide 80th percentile charges retained from each of these data sources are trended forward to the effective time period for the charges, as set forth in paragraph (e)(3)(iii) of this section.

(iii) *Trending forward.* The charges for each CPT/HCPCS code, obtained as described in paragraph (e)(3) of this section, are trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (e)(3) of this section.

(4) *Geographic area adjustment factors.* For each geographic area, a single adjustment factor is calculated as the arithmetic average of the outpatient geographic area adjustment factor published in the Milliman USA, Inc., Health Cost Guidelines (this factor constitutes the ratio of the level of charges for each geographic area *to* the nationwide level of charges), and a geographic area adjustment factor developed from the MDR database (*see* paragraph (a)(3) of this section for Data Sources). The MDR-based geographic area adjustment factors are calculated as the ratio of the CPT/HCPCS code weighted average charge level for each geographic area *to* the nationwide CPT/HCPCS code weighted average charge level.

(5) *Multiple surgical procedures.* When multiple surgical procedures are performed during the same outpatient encounter by a provider or provider team as indicated by multiple surgical CPT/HCPCS procedure codes, then the

CPT/HCPCS procedure code with the highest facility charge will be billed at 100 percent of the charges established under this section; the CPT/HCPCS procedure code with the second highest facility charge will be billed at 25 percent of the charges established under this section; the CPT/HCPCS procedure code with the third highest facility charge will be billed at 15 percent of the charges established under this section; and no outpatient facility charges will be billed for any additional surgical procedures.

(f) *Physician and other professional charges except for anesthesia services and certain dental services.* When VA provides or furnishes physician and other professional services, other than professional anesthesia services and certain professional dental services, within the scope of care referred to in paragraph (a)(1) of this section, physician and other professional charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for professional dental services identified by CPT code are determined in accordance with the provisions of this paragraph; charges for professional dental services identified by HCPCS Level II code are determined in accordance with the provisions of paragraph (h) of this section. Physician and other professional charges consist of charges for professional services that vary by geographic area, by CPT/HCPCS code, by site of service, and by modifier, where applicable. These charges are calculated as follows:

(1) *Formula.* For each CPT/HCPCS code or, where applicable, each CPT/HCPCS code and modifier combination, multiply the total geographically-adjusted RVUs determined pursuant to paragraph (f)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (f)(3) of this section to obtain the physician charge for each CPT/HCPCS code in a particular geographic area. Then, multiply this charge by the appropriate factors for any charge-significant modifiers, determined pursuant to paragraph (f)(4) of this section.

(2)(i) *Total geographically-adjusted RVUs for physician services that have Medicare RVUs.* The work expense and practice expense RVUs for CPT/HCPCS codes, other than the codes described in paragraphs (f)(2)(ii) and (f)(2)(iii) of this section, are compiled using Medicare Physician Fee Schedule RVUs. The sum of the geographically-adjusted work expense RVUs determined pursuant to paragraph (f)(2)(i)(A) of this section and the geographically-adjusted practice expense RVUs determined pursuant to paragraph (f)(2)(i)(B) of this section equals the total geographically-adjusted RVUs.

(A) *Geographically-adjusted work expense RVUs.* For each CPT/HCPCS code for each geographic area, the Medicare Physician Fee Schedule work expense RVUs are multiplied by the work expense Medicare Geographic Practice Cost Index. The result constitutes the geographically-adjusted work expense RVUs.

(B) *Geographically-adjusted practice expense RVUs.* For each CPT/HCPCS code for each geographic area, the Medicare Physician Fee Schedule practice expense RVUs are multiplied by the practice expense Medicare Geographic Practice Cost Index. The result constitutes the geographically-adjusted practice expense RVUs. In these calculations, facility practice expense RVUs are used to obtain geographically-adjusted practice expense RVUs for use by provider-based entities, and non-facility practice expense RVUs are used to obtain geographically-adjusted practice expense RVUs for use by non-provider-based entities.

(ii) *RVUs for CPT/HCPCS codes that do not have Medicare RVUs and are not designated as unlisted procedures.* For CPT/HCPCS codes that are not assigned RVUs in paragraphs (f)(2)(i) or (f)(2)(iii) of this section, total RVUs are developed based on various charge data sources. For these CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the MDR database. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Part B component of the Medicare Standard Analytical File 5 percent Sample. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Prevailing Healthcare Charges System nationwide commercial insurance database. For each of these CPT/HCPCS codes, nationwide total RVUs are obtained by taking the nationwide 80th percentile billed charges obtained using the preceding three databases and dividing by the untrended nationwide conversion factor for the corresponding CPT/HCPCS code group determined pursuant to paragraphs (f)(3) and (f)(3)(i) of this section. For any remaining CPT/HCPCS codes that have not been assigned RVUs using the preceding data sources, the nationwide total RVUs are calculated by summing the work expense and non-facility practice expense RVUs found in Ingenix/St. Anthony's RBRVS. The resulting nationwide total RVUs obtained using these four data sources are multiplied by the geographic area adjustment factors determined pursuant to paragraph (f)(2)(iv) of this section to obtain the area-specific total RVUs.

(iii) *RVUs for CPT/HCPCS codes designated as unlisted procedures.* For CPT/HCPCS codes designated as unlisted procedures, total RVUs are developed based on the weighted median of the total RVUs of CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median. The resulting nationwide total RVUs are multiplied by the geographic area adjustment factors determined pursuant to paragraph (f)(2)(iv) of this section to obtain the area-specific total RVUs.

(iv) *RVU geographic area adjustment factors for CPT/HCPCS codes that do not have Medicare RVUs, including codes that are designated as unlisted procedures.* The adjustment factor for each geographic area consists of the weighted average of the work expense and practice expense Medicare Geographic Practice Cost Indices for each geographic area using charge data for representative CPT/HCPCS codes statistically selected and weighted for work expense and practice expense.

(3) *Geographically-adjusted 80th percentile conversion factors.* CPT/HCPCS codes are separated into the following 23 CPT/HCPCS code groups: allergy immunotherapy, allergy testing, cardiovascular, chiropractor, consults, emergency room visits and observation care, hearing/speech exams, immunizations, inpatient visits, maternity/cesarean deliveries, maternity/non-deliveries, maternity/normal deliveries, miscellaneous medical, office/home/urgent care visits, outpatient psychiatry/alcohol and drug abuse, pathology, physical exams, physical medicine, radiology, surgery, therapeutic injections, vision exams, and well baby exams. For each of the 23 CPT/HCPCS code groups, representative CPT/HCPCS codes are statistically selected and weighted so as to give a weighted average RVU comparable to the weighted average RVU of the entire CPT/HCPCS code group (the selected CPT/HCPCS codes are set forth in the Milliman USA, Inc., Health Cost Guidelines fee survey); see paragraph (a)(3) of this section for Data Sources. The 80th percentile charge for each selected CPT/HCPCS code is obtained from the MDR database. A nationwide conversion factor (a monetary amount)

is calculated for each CPT/HCPCS code group as set forth in paragraph (f)(3)(i) of this section. The nationwide conversion factors for each of the 23 CPT/HCPCS code groups are trended forward to the effective time period for the charges, as set forth in paragraph (f)(3)(ii) of this section. The resulting amounts for each of the 23 groups are multiplied by geographic area adjustment factors determined pursuant to paragraph (f)(3)(iii) of this section, resulting in geographically-adjusted 80th percentile conversion factors for each geographic area for the 23 CPT/HCPCS code groups for the effective charge period.

(i) *Nationwide conversion factors.* Using the nationwide 80th percentile charges for the selected CPT/HCPCS codes from paragraph (f)(3) of this section, a nationwide conversion factor is calculated for each of the 23 CPT/HCPCS code groups by dividing the weighted average charge by the weighted average RVU.

(ii) *Trending forward.* The nationwide conversion factors for each of the 23 CPT/HCPCS code groups, obtained as described in paragraph (f)(3)(i) of this section, are trended forward based on changes to the physicians' services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 23 conversion factors.

(iii) *Geographic area adjustment factors.* Using the 80th percentile charges for the selected CPT/HCPCS codes from paragraph (f)(3) of this section for each geographic area, a geographic area-specific conversion factor is calculated for each of the 23 CPT/HCPCS code groups by dividing the weighted average charge by the weighted average geographically-adjusted RVU. The resulting conversion factor for each geographic area for each of the 23 CPT/HCPCS code groups is divided by the corresponding nationwide conversion factor determined pursuant to paragraph (f)(3)(i) of this section. The resulting ratios are the geographic area adjustment factors for the conversion factors for each of the 23 CPT/HCPCS code groups for each geographic area.

(4) *Charge adjustment factors for specified CPT/HCPCS code modifiers.* Surcharges or charge discounts are calculated in the following manner: from the Part B component of the Medicare Standard Analytical File 5 percent Sample, the ratio of weighted average billed charges for CPT/HCPCS codes with the specified modifier to the weighted average billed charge for CPT/HCPCS codes with no charge modifier is calculated, using the frequency of procedure codes with the modifier as weights in both weighted average calculations. The resulting ratios constitute the surcharge or discount factors for specified charge-significant CPT/HCPCS code modifiers.

(5) *Certain charges for providers other than physicians.* When services for which charges are established according to the preceding provisions of this paragraph (f) are performed by providers other than physicians, the charges for those services will be as determined by the preceding provisions of this paragraph, except as follows:

(i) *Outpatient facility charges.* When the services of providers other than physicians are furnished in outpatient facility settings or in other facilities designated as provider-based, and outpatient facility charges for those services have been established under paragraph (e) of this section, then the outpatient facility charges established under paragraph (e) will apply instead of the charges established under this paragraph (f).

(ii) *Discounted charges.* Charges for the professional services of the following providers will be the indicated percentages of the amount that would be charged if the care had been provided by a physician:

(A) Nurse practitioner: 85 percent.

(B) Clinical nurse specialist: 85 percent.

(C) Physician Assistant: 85 percent.

(D) Clinical psychologist: 80 percent.

(E) Clinical social worker: 75 percent.

(F) Dietitian: 75 percent.

(G) Clinical pharmacist: 80 percent.

(g) *Professional charges for anesthesia services.* When VA provides or furnishes professional anesthesia services within the scope of care referred to in paragraph (a)(1) of this section, professional anesthesia charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for professional anesthesia services personally performed by anesthesiologists will be 100 percent of the charges determined as set forth in this paragraph. Charges for professional anesthesia services provided by non-medically directed certified registered nurse anesthetists will also be 100 percent of the charges determined as set forth in this paragraph. Charges for professional anesthesia services provided by medically directed certified registered nurse anesthetists will be 50 percent of the charges otherwise determined as set forth in this paragraph. Professional anesthesia charges consist of charges for professional services that vary by geographic area, by CPT/HCPCS code base units, and by number of time units. These charges are calculated as follows:

(1) *Formula.* For each anesthesia CPT/HCPCS code, multiply the total anesthesia RVUs determined pursuant to paragraph (g)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (g)(3) of this section to obtain the professional anesthesia charge for each CPT/HCPCS code in a particular geographic area.

(2) *Total RVUs for professional anesthesia services.* The total anesthesia RVUs for each anesthesia CPT/HCPCS code are the sum of the base units (as compiled by CMS) for that CPT/HCPCS code and the number of time units reported for the anesthesia service, where one time unit equals 15 minutes. For anesthesia CPT/HCPCS codes designated as unlisted procedures, base units are developed based on the weighted median base units for anesthesia CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median base units.

(3) *Geographically-adjusted 80th percentile conversion factors.* A nationwide 80th percentile conversion factor is calculated according to the methodology set forth in paragraph (g)(3)(i) of this section. The nationwide conversion factor is then trended forward to the effective time period for the charges, as set forth in paragraph (g)(3)(ii) of this section. The resulting amount is multiplied by geographic area adjustment factors determined pursuant to paragraph (g)(3)(iii) of this section, resulting in geographically-adjusted 80th percentile conversion factors for each geographic area for the effective charge period.

(i) *Nationwide conversion factor.* Preliminary 80th percentile conversion factors for each area are compiled from the MDR database. Then, a preliminary nationwide weighted-average 80th percentile conversion factor is calculated, using as weights the population (census) frequencies for each geographic area as presented in the Milliman USA, Inc., Health Cost Guidelines (*see* paragraph (a)(3) of this section for Data Sources). A nationwide 80th percentile fee by CPT/HCPCS code is then computed by multiplying this

conversion factor by the MDR base units for each CPT/HCPCS code. An adjusted 80th percentile conversion factor by CPT/HCPCS code is then calculated by dividing the nationwide 80th percentile fee for each procedure code by the anesthesia base units (as compiled by CMS) for that CPT/HCPCS code. Finally, a nationwide weighted average 80th percentile conversion factor is calculated using combined frequencies for billed base units and time units from the part B component of the Medicare Standard Analytical File 5 percent Sample as weights.

(ii) *Trending forward.* The nationwide conversion factor, obtained as described in paragraph (g)(3)(i) of this section, is trended forward based on changes to the physicians' services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the conversion factor.

(iii) *Geographic area adjustment factors.* The preliminary 80th percentile conversion factors for each geographic area described in paragraph (g)(3)(i) of this section are divided by the corresponding preliminary nationwide 80th percentile conversion factor also described in paragraph (g)(3)(i). The resulting ratios are the adjustment factors for each geographic area.

(h) *Professional charges for dental services identified by HCPCS Level II codes.* When VA provides or furnishes outpatient dental professional services within the scope of care referred to in paragraph (a)(1) of this section, and such services are identified by HCPCS code rather than CPT code, the charges billed for such services will be determined in accordance with the provisions of this paragraph. The charges for dental services vary by geographic area and by HCPCS code. These charges are calculated as follows:

(1) *Formula.* For each HCPCS dental code, multiply the nationwide 80th percentile charge determined pursuant to paragraph (h)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (h)(3) of this section. The result constitutes the area-specific dental charge.

(2) *Nationwide 80th percentile charges by HCPCS code.* For each HCPCS dental code, 80th percentile charges are extracted from three independent data sources: Prevailing Healthcare Charges System database; National Dental Advisory Service nationwide pricing index; and the Dental UCR Module of the Comprehensive Healthcare Payment System, a release from Ingenix from a nationwide database of dental charges (*see* paragraph (a)(3) of this section for Data Sources). Charges for each database are then trended forward to a common date, based on actual changes to the dental services component of the CPI–U. Charges for each HCPCS dental code from each data source are combined into an average 80th percentile charge by means of the methodology set forth in paragraph (h)(2)(i) of this section. HCPCS dental codes designated as unlisted are assigned 80th percentile charges by means of the methodology set forth in paragraph (h)(2)(ii) of this section. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (h)(2)(iii) of this section. The results constitute the nationwide 80th percentile charge for each HCPCS dental code.

(i) *Averaging methodology.* The average charge for any particular HCPCS dental code is calculated by first computing a preliminary mean average of the three charges for each code. Statistical outliers are identified and removed by testing whether any charge differs from the preliminary mean charge by more than 50 percent of the preliminary mean charge. In such cases, the charge most distant from the preliminary mean is removed as an outlier, and the average charge is calculated as a mean of the two remaining charges. In cases where none of the charges differ from the preliminary mean charge by more than 50 percent of the preliminary mean charge, the average charge is calculated as a mean of all three reported charges.

(ii) *Nationwide 80th percentile charges for HCPCS dental codes designated as unlisted procedures.* For HCPCS dental codes designated as unlisted procedures, 80th percentile charges are developed based on the weighted median 80th percentile charge of HCPCS dental codes within the series in which the unlisted procedure code occurs. The distribution of procedures and services from the Prevailing Healthcare Charges System nationwide commercial insurance database is used for the purpose of computing the weighted median.

(iii) *Trending forward.* 80th percentile charges for each dental procedure code, obtained as described in paragraph (h)(2) of this section, are trended forward based on the dental services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) *Geographic area adjustment factors.* A geographic adjustment factor (consisting of the ratio of the level of charges in a given geographic area *to* the nationwide level of charges) for each geographic area and dental class of service is obtained from Milliman USA, Inc., Dental Health Cost Guidelines, a database of nationwide commercial insurance charges and relative costs; and a normalized geographic adjustment factor computed from the Dental UCR Module of the Comprehensive Healthcare Payment System compiled by Ingenix, as follows: Using local and nationwide average charges reported in the Ingenix data, a local weighted average charge for each dental class of procedure codes is calculated using utilization frequencies from the Milliman USA, Inc., Dental Health Cost Guidelines as weights (*see* paragraph (a)(3) of this section for Data Sources). Similarly, using nationwide average charge levels, a nationwide average charge by dental class of procedure codes is calculated. The normalized geographic adjustment factor for each dental class of procedure codes and for each geographic area is the ratio of the local average charge divided by the corresponding nationwide average charge. Finally, the geographic area adjustment factor is the arithmetic average of the corresponding factors from the data sources mentioned in the first sentence of this paragraph (h)(3).

(i) *Pathology and laboratory charges.* When VA provides or furnishes pathology and laboratory services within the scope of care referred to in paragraph (a)(1) of this section, charges billed for such services will be determined in accordance with the provisions of this paragraph. Pathology and laboratory charges consist of charges for services that vary by geographic area and by CPT/HCPCS code. These charges are calculated as follows:

(1) *Formula.* For each CPT/HCPCS code, multiply the total geographically-adjusted RVUs determined pursuant to paragraph (i)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (i)(3)

of this section to obtain the pathology/laboratory charge for each CPT/HCPCS code in a particular geographic area.

(2)(i) *Total geographically-adjusted RVUs for pathology and laboratory services that have Medicare-based RVUs.* Total RVUs are developed based on the Medicare Clinical Diagnostic Laboratory Fee Schedule (CLAB). The CLAB payment amounts are upwardly adjusted such that the adjusted payment amounts are, on average, equivalent to Medicare Physician Fee Schedule payment levels, using statistical comparisons to the 80th percentile derived from the MDR database. These adjusted payment amounts are then divided by the corresponding Medicare conversion factor to derive RVUs for each CPT/HCPCS code. The resulting nationwide total RVUs are multiplied by the geographic adjustment factors determined pursuant to paragraph (i)(2)(iv) of this section to obtain the area-specific total RVUs.

(ii) *RVUs for CPT/HCPCS codes that do not have Medicare-based RVUs and are not designated as unlisted procedures.* For CPT/HCPCS codes that are not assigned RVUs in paragraphs (i)(2)(i) or (i)(2)(iii) of this section, total RVUs are developed based on various charge data sources. For these CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the MDR database. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Part B component of the Medicare Standard Analytical File 5 percent Sample. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Prevailing Healthcare Charges System nationwide commercial insurance database. For each of these CPT/HCPCS codes, nationwide total RVUs are obtained by taking the nationwide 80th percentile billed charges obtained using the preceding three databases and dividing by the untrended nationwide conversion factor determined pursuant to paragraphs (i)(3) and (i)(3)(i) of this section. For any remaining CPT/HCPCS codes that have not been assigned RVUs using the preceding data sources, the nationwide total RVUs are calculated by summing the work expense and non-facility practice expense RVUs found in Ingenix/St. Anthony's RBRVS. The resulting nationwide total RVUs obtained using these four data sources are multiplied by the geographic area adjustment factors determined pursuant to paragraph (i)(2)(iv) of this section to obtain the area-specific total RVUs.

(iii) *RVUs for CPT/HCPCS codes designated as unlisted procedures.* For CPT/HCPCS codes designated as unlisted procedures, total RVUs are developed based on the weighted median of the total RVUs of CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median. The resulting nationwide total RVUs are multiplied by the geographic area adjustment factors determined pursuant to paragraph (i)(2)(iv) of this section to obtain the area-specific total RVUs.

(iv) *RVU geographic area adjustment factors for CPT/HCPCS codes that do not have Medicare RVUs, including codes that are designated as unlisted procedures.* The adjustment factor for each geographic area consists of the weighted average of the work expense and practice expense Medicare Geographic Practice Cost Indices for each geographic area using charge data for representative CPT/HCPCS codes statistically selected and weighted for work expense and practice expense.

(3) *Geographically-adjusted 80th percentile conversion factors.* Representative CPT/HCPCS codes are statistically selected and weighted so as to give a weighted average RVU comparable to the weighted average RVU of the entire pathology/laboratory CPT/HCPCS code group (the selected CPT/HCPCS codes are set forth in the Milliman USA, Inc., Health Cost Guidelines fee survey). The 80th percentile charge for each selected CPT/HCPCS code is obtained from the MDR database. A nationwide conversion factor (a monetary amount) is calculated as set forth in paragraph (i)(3)(i) of this section. The nationwide conversion factor is trended forward to the effective time period for the charges, as set forth in paragraph (i)(3)(ii) of this section. The resulting amount is multiplied by a geographic area adjustment factor determined pursuant to paragraph (i)(3)(iv) of this section, resulting in the geographically-adjusted 80th percentile conversion factor for the effective charge period.

(i) *Nationwide conversion factors.* Using the nationwide 80th percentile charges for the selected CPT/HCPCS codes from paragraph (i)(3) of this section, a nationwide conversion factor is calculated by dividing the weighted average charge by the weighted average RVU.

(ii) *Trending forward.* The nationwide conversion factor, obtained as described in paragraph (i)(3) of this section, is trended forward based on changes to the physicians' services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the pathology/laboratory conversion factor.

(iii) *Geographic area adjustment factor.* Using the 80th percentile charges for the selected CPT/HCPCS codes from paragraph (i)(3) of this section for each geographic area, a geographic area-specific conversion factor is calculated by dividing the weighted average charge by the weighted average geographically-adjusted RVU. The resulting geographic area conversion factor is divided by the corresponding nationwide conversion factor determined pursuant to paragraph (i)(3)(i) of this section. The resulting ratios are the geographic area adjustment factors for pathology and laboratory services for each geographic area.

(j) *Observation care facility charges.* When VA provides observation care within the scope of care referred to in paragraph (a)(1) of this section, the facility charges billed for such care will be determined in accordance with the provisions of this paragraph. The charges for this care vary by geographic area and number of hours of care. These charges are calculated as follows:

(1) *Formula.* For each occurrence of observation care, add the nationwide base charge determined pursuant to paragraph (j)(2) of this section to the product of the number of hours in observation care and the hourly charge also determined pursuant to paragraph (j)(2) of this section. Then multiply this amount by the appropriate geographic area adjustment factor determined pursuant to paragraph (j)(3) of this section. The result constitutes the area-specific observation care facility charge.

(2)(i) *Nationwide 80th percentile observation care facility charges.* To calculate nationwide base and hourly facility charges, all claims with observation care line items are selected from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. Then, using the 80th percentile observation line item charges for each unique hourly length of stay, a standard linear regression technique is used to calculate the nationwide 80th percentile base charge and 80th percentile hourly charge. Finally, the resulting amounts are each trended forward to the effective time

period for the charges, as set forth in paragraph (j)(2)(ii) of this section. The results constitute the nationwide 80th percentile base and hourly facility charges for observation care.

(ii) *Trending forward.* The nationwide 80th percentile base and hourly facility charges for observation care, obtained as described in paragraph (j)(2)(i) of this section, are trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) *Geographic area adjustment factors.* The geographic area adjustment factors for observation care facility charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(k) *Ambulance and other emergency transportation charges.* When VA provides ambulance and other emergency transportation services that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services will be determined in accordance with the provisions of this paragraph. The charges for these services vary by HCPCS code, length of trip, and geographic area. These charges are calculated as follows:

(1) *Formula.* For each occasion of ambulance or other emergency transportation service, add the nationwide base charge for the appropriate HCPCS code determined pursuant to paragraph (k)(2)(i) of this section to the product of the number of miles traveled and the appropriate HCPCS code mileage charge determined pursuant to paragraph (k)(2)(ii) of this section. Then multiply this amount by the appropriate geographic area adjustment factor determined pursuant to paragraph (k)(3) of this section. The result constitutes the area-specific ambulance or other emergency transportation service charge.

(2)(i) *Nationwide 80th percentile all-inclusive base charge.* To calculate a nationwide all-inclusive base charge, all ambulance and other emergency transportation claims are selected from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. Excluding professional and mileage charges, as well as all-inclusive charges which are reported on such claims, the total charge per claim, including incidental supplies, is computed. Then, the 80th percentile amount for each HCPCS code is computed. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (k)(2)(iii) of this section. The results constitute the nationwide 80th percentile all-inclusive base charge for each HCPCS base charge code.

(ii) *Nationwide 80th percentile mileage charge.* To calculate a nationwide mileage charge, all ambulance and other emergency transportation claims are selected from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. Excluding professional, incidental, and base charges, as well as claims with all-inclusive charges, the total mileage charge per claim is computed. This amount is divided by the number of miles reported on the claim. Then, the 80th percentile amount for each HCPCS code, using miles as weights, is computed. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (k)(2)(iii) of this section. The results constitute the nationwide 80th percentile mileage charge for each HCPCS mileage code.

(iii) *Trending forward.* The nationwide 80th percentile charge for each HCPCS code, obtained as described in paragraphs (k)(2)(i) and (k)(2)(ii) of this section, is trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) *Geographic area adjustment factors.* The geographic area adjustment factors for ambulance and other emergency transportation charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(l) *Charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes.* When VA provides DME, drugs, injectables, or other medical services, items, or supplies that are identified by HCPCS Level II codes and that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services, items, and supplies will be determined in accordance with the provisions of this paragraph. The charges for these services, items, and supplies vary by geographic area, by HCPCS code, and by modifier, when applicable. These charges are calculated as follows:

(1) *Formula.* For each HCPCS code, multiply the nationwide charge determined pursuant to paragraphs (l)(2), (l)(3), and (l)(4) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (l)(5) of this section. The result constitutes the area-specific charge.

(2) *Nationwide 80th percentile charges for HCPCS codes with RVUs.* For each applicable HCPCS code, RVUs are compiled from the data sources set forth in paragraph (l)(2)(i) of this section. The RVUs are multiplied by the charge amount for each incremental RVU determined pursuant to paragraph (l)(2)(ii) of this section, and this amount is added to the fixed charge amount also determined pursuant to paragraph (l)(2)(ii) of this section. Then, for each HCPCS code, this charge is multiplied by the appropriate 80th percentile to median charge ratio determined pursuant to paragraph (l)(2)(iii) of this section. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (l)(2)(iv) of this section to obtain the nationwide 80th percentile charge.

(i) *RVUs for DME, drugs, injectables, and other medical services, items, and supplies.* For the purpose of the statistical methodology set forth in paragraph (l)(2)(ii) of this section, HCPCS codes are assigned to the following HCPCS code groups. For the HCPCS codes in each group, the RVUs or amounts indicated constitute the RVUs:

(A) Chemotherapy Drugs: Ingenix/St. Anthony's RBRVS Practice Expense RVUs.

(B) Other Drugs: Ingenix/St. Anthony's RBRVS Practice Expense RVUs.

(C) DME—Hospital Beds: Medicare DME Fee Schedule amounts.

(D) DME—Medical/Surgical Supplies: Medicare DME Fee Schedule amounts.

(E) DME—Orthotic Devices: Medicare DME Fee Schedule amounts.

(F) DME—Oxygen and Supplies: Medicare DME Fee Schedule amounts.

(G) DME—Wheelchairs: Medicare DME Fee Schedule amounts.

(H) Other DME: Medicare DME Fee Schedule amounts.

(I) Enteral/Parenteral Supplies: Medicare Parenteral and Enteral Nutrition Fee Schedule amounts.

(J) Surgical Dressings and Supplies: Medicare DME Fee Schedule amounts.

(K) Vision Items—Other Than Lenses: Medicare DME Fee Schedule amounts.

(L) Vision Items—Lenses: Medicare DME Fee Schedule amounts.

(M) Hearing Items: Ingenix/St. Anthony's RBRVS Practice Expense RVUs.

(ii) *Charge amounts.* Using combined Part B and DME components of the Medicare Standard Analytical File 5% Sample, the median billed charge is calculated for each HCPCS code. A mathematical approximation methodology based on least squares techniques is applied to the RVUs specified for each of the groups set forth in paragraph (l)(2)(i) of this section, yielding two charge amounts for each HCPCS code group: a charge amount per incremental RVU, and a fixed charge amount.

(iii) *80th Percentile to median charge ratios.* Two ratios are obtained for each HCPCS code group set forth in paragraph (l)(2)(i) of this section by dividing the weighted average 80th percentile charge by the weighted average median charge derived from two data sources: Medicare data, as represented by the combined Part B and DME components of the Medicare Standard Analytical File 5% Sample; and the MDR database. Charge frequencies from the Medicare data are used as weights when calculating all weighted averages. For each HCPCS code group, the smaller of the two ratios is selected as the adjustment from median to 80th percentile charges.

(iv) *Trending forward.* The charges for each HCPCS code, obtained as described in paragraph (l)(2)(iii) of this section, are trended forward based on changes to the medical care commodities component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (l)(2)(iii) of this section.

(3) *Nationwide 80th percentile charges for HCPCS codes without RVUs.* For each applicable HCPCS code, 80th percentile charges are extracted from three independent data sources: the MDR database; Medicare, as represented by the combined Part B and DME components of the Medicare Standard Analytical File 5 percent Sample; and Milliman USA, Inc., Optimized HMO (Health Maintenance Organization) Data Sets (*see* paragraph (a)(3) of this section for Data Sources). Charges from each database are then trended forward to the effective time period for the charges, as set forth in paragraph (l)(3)(i) of this section. Charges for each HCPCS code from each data source are combined into an average 80th percentile charge by means of the methodology set forth in paragraph (l)(3)(ii) of this section. The results constitute the nationwide 80th percentile charge for each applicable HCPCS code.

(i) *Trending forward.* The charges from each database for each HCPCS code, obtained as described in paragraph (l)(3) of this section, are trended forward based on changes to the medical care commodities component of the CPI–U. Actual CPI–U changes are used from the time period of each source database through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (l)(3) of this section.

(ii) *Averaging methodology.* The average 80th percentile trended charge for any particular HCPCS code is calculated by first computing a preliminary mean average of the three charges for each HCPCS code. Statistical outliers are identified and removed by testing whether any charge differs from the preliminary mean charge by more than 5 times the preliminary mean charge, or by less than 0.2 times the preliminary mean charge. In such cases, the charge most distant from the preliminary mean is removed as an outlier, and the average charge is calculated as a mean of the two remaining charges. In cases where none of the charges differ from the preliminary mean charge by more than 5 times the preliminary mean charge, or less than 0.2 times the preliminary mean charge, the average charge is calculated as a mean of all three reported charges.

(4) *Nationwide 80th percentile charges for HCPCS codes designated as unlisted or unspecified.* For HCPCS codes designated as unlisted or unspecified procedures, services, items, or supplies, 80th percentile charges are developed based on the weighted median 80th percentile charges of HCPCS codes within the series in which the unlisted or unspecified code occurs. A nationwide VA distribution of procedures, services, items, and supplies is used for the purpose of computing the weighted median.

(5) *Geographic area adjustment factors.* For the purpose of geographic adjustment, HCPCS codes are combined into two groups: drugs and DME/supplies, as set forth in paragraph (l)(5)(i) of this section. The geographic area adjustment factor for each of these groups is calculated as the ratio of the area-specific weighted average charge determined pursuant to paragraph (l)(5)(ii) of this section divided by the nationwide weighted average charge determined pursuant to paragraph (l)(5)(iii) of this section.

(i) *Combined HCPCS code groups for geographic area adjustment factors for DME, drugs, injectables, and other medical services, items, and supplies.* For the purpose of the statistical methodology set forth in paragraph (l)(5) of this section, each of the HCPCS code groups set forth in paragraph (l)(2)(i) of this section is assigned to one of two combined HCPCS code groups, as follows:

(A) Chemotherapy Drugs: Drugs.

(B) Other Drugs: Drugs.

(C) DME—Hospital Beds: DME/supplies.

(D) DME—Medical/Surgical Supplies: DME/supplies.

(E) DME—Orthotic Devices: DME/supplies.

(F) DME—Oxygen and Supplies: DME/supplies.

(G) DME—Wheelchairs: DME/supplies.

(H) Other DME: DME/supplies.

(I) Enteral/Parenteral Supplies: DME/supplies.

(J) Surgical Dressings and Supplies: DME/supplies.

(K) Vision Items—Other Than Lenses: DME/supplies.

(L) Vision Items—Lenses: DME/supplies.

(M) Hearing Items: DME/supplies.

(ii) *Area-specific weighted average charges.* Using the median charges by HCPCS code from the MDR database for each geographic area and utilization frequencies by HCPCS code from the combined Part B and DME components of the Medicare Standard Analytical File 5 percent Sample, an area-specific weighted average charge is calculated for each combined HCPCS code group.

(iii) *Nationwide weighted average charges.* Using the area-specific weighted average charges determined

pursuant to paragraph (l)(5)(ii) of this section, a nationwide weighted average charge is calculated for each combined HCPCS code group, using as weights the population (census) frequencies for each geographic area as presented in the Milliman USA, Inc., Health Cost Guidelines (see paragraph (a)(3) of this section for Data Sources).

(m) *Charges for prescription drugs not administered during treatment.* Notwithstanding other provisions of this section, when VA provides or furnishes prescription drugs not administered during treatment, within the scope of care referred to in paragraph (a)(1) of this section, charges billed separately for such prescription drugs will be based on VA costs in accordance with the methodology set forth in § 17.102 of this part.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0606.)

(Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1721, 1722, 1729.)

[FR Doc. 03–31176 Filed 12–18–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[CARB–106–DELa; FRL–7600–5]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending certain regulations to reflect the current delegation status of national emission standards for hazardous air pollutants in California. Several local air pollution control agencies in California have requested delegation of these Federal standards as they apply to non-major sources. The purpose of this action is to approve those delegation requests and update the listing in the Code of Federal Regulations.

DATES: This rule is effective on February 17, 2004, without further notice, unless EPA receives relevant adverse comments by January 20, 2004. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*. Copies of the requests for delegation and other supporting documentation are available for public inspection (docket number A–96–25) at the Region IX office during normal business hours by appointment. Copies are also available at: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Delegation of NESHAPs

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to State or local air pollution control agencies the authority to implement and enforce the standards set out in title 40 of the Code of Federal Regulations (40 CFR), part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, subpart E (hereinafter referred to as ''subpart E''), establishing procedures for EPA's approval of State rules or programs under section 112(l) (*see* 58 FR 62262). Subpart E was later amended on September 14, 2000 (*see* 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and subpart E. To streamline the approval process for future applications, a State or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the State or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program. On July 6, 1995, the California Air Resources Board (CARB) submitted a demonstration that California has adequate authorities and resources to implement and enforce Clean Air Act section 112 programs and rules. This demonstration was approved on May 21, 1996 (61 FR 25397).

B. California Delegations

While each local air pollution control agency in California (district) has an approved program for receiving delegation of any CAA section 112 standards as promulgated, California districts currently have delegation only for standards that apply to major sources. As part of EPA's approval of each district's Title V operating permits program, districts received delegation of unchanged federal section 112 standards for Title V sources. This delegation did not extend to sources not covered by the California Title V program submittals. Therefore, California needed to make a separate voluntary request for delegation of any section 112 standards that apply to sources not covered by district Title V programs (area sources).

C. Area Source Delegation Requests

On October 6, 2003, CARB submitted on behalf of nine California districts a request for delegation of all Federal section 112 standards that apply to area sources, with the exception of the dry cleaning and chromium electroplating standards for which State or local rules have already been approved (*see* 61 FR 25397 and 64 FR 12762). Upon the effective date of this delegation, these districts will have authority to implement and enforce existing area source standards unchanged as promulgated by EPA. Additionally, each of these nine districts will receive delegation of any future area source standards or revisions 90 days after promulgation of these standards or revisions, unless the district chooses to decline delegation of a particular future standard by notifying the EPA Region IX office in writing. If no such notification is received, the delegation will go into effect 90 days after promulgation of the standard or revision, without any additional action from the district or EPA.

CARB's October 6, 2003, request was submitted on behalf of the following nine districts in California: Antelope Valley Air Quality Management District, Butte County Air Quality Management District, Kern County Air Pollution Control District, Mendocino County Air Quality Management District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, Ventura County Air Pollution Control

District, and Yolo-Solano Air Quality Management District. Each of these districts asked CARB to make a delegation request on their behalf for CAA section 112 area source standards. The dates of each district's letter to CARB are listed in the table below:

Local agency	Date of letter to CARB
Antelope Valley AQMD	Dec. 5, 2002.
Butte County AQMD	July 7, 2003.
Kern County APCD	July 7, 2003.
Mendocino County AQMD	July 14, 2003.
Mojave Desert AQMD	Dec. 5, 2002.
Monterey Bay Unified APCD.	July 30, 2002.
San Luis Obispo County APCD.	Nov. 22, 2002.
Ventura County APCD	July 7, 2003.
Yolo-Solano AQMD	Aug. 11, 2003.

In the future, other districts may choose to make similar delegation requests through CARB. EPA Region IX may grant approvals of such requests by means of a letter. These delegation approvals would then be effective upon the date of the approval letter and EPA Region IX would later publish a **Federal Register** action to update the CFR.

II. EPA Action

With the exception of the dry cleaning and chromium electroplating standards, EPA is hereby granting delegation of unchanged Federal section 112 area source standards to the following districts in California: Antelope Valley Air Quality Management District, Butte County Air Quality Management District, Kern County Air Pollution Control District, Mendocino County Air Quality Management District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District. Upon the effective date of this action, these nine districts will have authority to implement and enforce existing area source standards unchanged as promulgated by EPA. Each of these districts will also receive delegation of any future area source standards or revisions 90 days after promulgation of these standards or revisions, unless the district chooses to decline delegation of a particular future standard by notifying the EPA Region IX office in writing.

Today's action also serves to notify the public that future requests for delegation of CAA section 112 area source standards from other California districts may be approved by letter, and these delegations will be later codified into the CFR.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). Delegations of authority to implement and enforce unchanged Federal standards under section 112(l) of the Clean Air Act do not create any new requirements but simply allow the State to administer requirements that have been or will be separately promulgated. 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 does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). The State voluntarily requested this delegation under section 112(l) for the purpose of implementing and enforcing the air toxics program with respect to sources not covered by district Title V operating permit programs. The delegation imposes no new Federal requirements. Since the State was not required by law to seek delegation, this Federal action does not impose a mandate on the State.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations,

Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: December 2, 2003.

Matt Haber,

Acting Director, Air Division, Region IX.

■ Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

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

■ 2. Section 63.99 is amended by adding paragraph (a)(5)(i) and revising paragraph (a)(5)(ii) introductory text to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(5) * * *

(i)(A) California major sources. Except as described in paragraph (ii) below, each local air pollution control agency in California has delegation for national emission standards promulgated in this part as they apply to major sources.

(B) California area sources. Except as described in paragraph (ii), the local agencies listed below also have delegation for national emission standards promulgated in this part as they apply to area sources:

(*1*) Antelope Valley Air Quality Management District

(*2*) Butte County Air Quality Management District

(*3*) Kern County Air Pollution Control District

(*4*) Mendocino County Air Quality Management District

(*5*) Mojave Desert Air Quality Management District

(*6*) Monterey Bay Unified Air Pollution Control District

(*7*) San Luis Obispo County Air Pollution Control District

(*8*) Ventura County Air Pollution Control District

(*9*) Yolo-Solano Air Quality Management District

(ii) California approvals other than straight delegation.

Affected sources must comply with the *California Regulatory Requirements Applicable to the Air Toxics Program*, January 5, 1999 (incorporated by reference as specified in § 63.14), as described as follows:

* * * * *

[FR Doc. 03–31348 Filed 12–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3871, MB Docket No. 03–132, RM–10709]

Radio Broadcasting Services; Oak Grove, KY, Springfield, TN, and Trenton, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Saga Communications of Tuckessee, LLC, licensee of Station WJOI–FM, reallots Channel 232A from Springfield, Tennessee to Oak Grove, Kentucky, as the community's first local aural transmission service, and modifies Station WJOI–FM license accordingly. Channel 232A can be allotted to Oak Grove, in compliance with the minimum distance separation requirement of the Commission's rules, provided there is a site restriction 9.3 kilometers (5.8 miles) east of the community. The reference coordinates for Channel 232A at Oak Grove are 36–38–23 NL and 87–20–39 WL. This document also dismisses a counterproposal filed by Saga Communications of Tuckessee, LLC that requested the reallotment of Station WJOI–FM, Channel 232A from Springfield, Tennessee to Trenton, Kentucky in lieu of Oak Grove, Kentucky.

DATES: Effective January 23, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 03–132 adopted December 3, 2003, and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Oak Grove, Channel 232A.

■ 3.Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Springfield, Channel 232A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–31259 Filed 12–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3554; MM Docket No. 02–49, RM–10220]

Radio Broadcasting Services; Westborough and Worcester, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Entercom Boston License, L.L.C., reallots Channel 297B from Worcester to Westborough, Massachusetts, as the community's first local aural transmission service and modifies Station WAAF(FM)'s license accordingly. *See* 67 FR 14664, March 27, 2002. Although Station WAAF(FM) is a pre-1964 and pre-1989 grandfathered short-spaced station, it may change its community of license at its current license site because no new short-spacings would be created. The coordinates for Channel 297B at Westborough at Station WAAF(FM)'s current license site are 42–18–11 North Latitude and 71–53–52 West Longitude. While Station WAAF(FM) has an outstanding construction permit at Worcester, this change of community proposal must be implemented at its

current license site. Although Westborough is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian government is not required because there is no change in class or coordinates.

DATES: Effective January 23, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–49, adopted November 12, 2003, and released November 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by removing Channel 297B at Worcester and by adding Westborough, Channel 297B.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–31260 Filed 12–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3875; MB Docket No. 03–22, RM–10597]

Radio Broadcasting Services; Racine, OH, and Ravenswood, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rulemaking,* 68 FR 7964 (February 19, 2003), this document grants a petition for rulemaking filed by Legend Communications of West Virginia, LLC, licensee of Station WLWF(FM), proposing to reallot Channel 226A from Ravenswood, West Virginia, to Racine, Ohio, as the community's first local aural transmission service, and modify the license for Station WLWF(FM)'s license to reflect the change of community. Channel 226A is reallotted to Racine, at Station WLWF(FM)'s existing transmitter site 14.4 kilometers (9 miles) southeast of the community at coordinates 38–53–36 NL and 81–46–52 WL . Since this proposal is within 320 kilometers (200 miles) of the U.S.-Canada border, concurrence of the government of Canada to the proposed allotment has been requested but not received. Operation with the facilities specified for Racine is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement or if specifically objected to by Industry Canada.

DATES: Effective January 23, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–22, adopted December 3, 2003, and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Racine, Channel 226A.

■ 3. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Ravenswood, Channel 226A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–31261 Filed 12–18–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 244
Friday, December 19, 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

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503–AA26

Guidelines for Designating Biobased Products for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to establish guidelines for designating items made from biobased products that would be afforded Federal procurement preference, as required under Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA).

DATES: Submit comments on or before February 17, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send your comments to: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 361, 300 Seventh Street SW., Washington, DC 20024. If you wish to use e-mail, go to the Web site *http://www.biobased.oce.usda.gov* for e-mail instructions or use the e-mail address *fb4p@oce.usda.gov.* Please include your name and address in your message and ''Proposed Guidelines'' on the subject line. Persons with disabilities who require alternative means for communication for regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice) and (202) 401–4133 (TDD).

FOR FURTHER INFORMATION CONTACT: Marvin Duncan by e-mail at *mduncan@oce.usda.gov* or by phone at (202) 401–0532.

SUPPLEMENTARY INFORMATION:

I. Authority

These guidelines are proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Overview of Section 9002

Section 9002 provides for preferred procurement of biobased products by Federal agencies. Federal agencies are required to purchase biobased products, as defined in regulations to implement the statute, for all items costing over $10,000 or when the quantities of functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more. Procurements by a Federal agency subject to section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962) are not subject to the requirements under section 9002 to the extent that the requirements of the two programs are inconsistent. Federal agencies must procure biobased products unless the items are not reasonably available, fail to meet applicable performance standards, or are available only at an unreasonable price.

The Office of Federal Procurement Policy (OFPP) and the USDA will work in cooperation to implement the requirements of section 9002. In this document, we are proposing to establish guidelines for Federal agencies to follow in the procurement of items designated for preferred procurement. These guidelines also address the statutory requirement that Federal agencies have in place, within 1 year of the publication of final guidelines, a procurement program that assures items composed of biobased products will be purchased to the maximum extent practical. Those procurement programs would have to contain a biobased products preference program, an agency promotion program, and provisions for the annual review and monitoring of an agency's procurement program. USDA consulted with the Environmental Protection Agency (EPA), the General Services Administration (GSA), and the Department of Commerce National Institute of Standards and Technology (NIST) in preparing these proposed guidelines.

In designating items (generic groupings of specific products such as crankcase oils or synthetic fibers), the Secretary will consider the availability of such items and the economic and technological feasibility of using such items, including life cycle costs. Federal agencies would be required to purchase products contained within an item only after that item has been designated for preferred procurement. In addition, the Secretary would provide information to Federal agencies on the availability, relative price, performance, and environmental and public health benefits of such items and, where appropriate, would recommend the level of biobased content to be contained in the procured product. Manufacturers and vendors would be able to offer their products to Federal agencies for preferred procurement under the proposed program when their commercial products fell within the definition of an item that had been designated for preferred procurement and the biobased content of the products met the standards set forth in the guidelines.

Paragraph (h) of section 9002 provides that the Secretary, in consultation with the Administrator of the Environmental Protection Agency (EPA), shall establish a voluntary program authorizing producers of biobased products to use a ''U.S.D.A. Certified Biobased Product'' label. In a subsequent rulemaking, we intend to establish that voluntary program and provide eligibility criteria and guidelines for the use of the ''U.S.D.A. Certified Biobased Product'' label.

Paragraph (j) of section 9002 provides funds to the Secretary to support the testing of biobased products to carry out the provisions of the section.

The legislative history of Title IX of FSRIA suggests that Congress had in mind three primary objectives that would apply to section 9002. The first objective is to improve demand for biobased products. This would have a number of salutary effects, one of which would be to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products. Another important effect would be the substitution of products with a more benign or beneficial environmental impact, as compared to the use of fossil energy based products.

As a second objective, Congress wants to spur the development of value-added agricultural processing and manufacturing in rural communities.

Since biobased feedstocks are largely produced in rural settings and, because of their bulk, require pre-processing or manufacturing close to where they are grown, increased dependence on biobased products appears likely to increase the amount of pre-processing and manufacturing of biobased products in rural regions of the Nation. This trend would help to create new investment, job formation, and income generation in these rural regions.

The third objective is to enhance the Nation's energy security by substituting domestically produced biobased products for fossil energy-based products derived from imported oil and natural gas. The growing dependence of the Nation on imported oil and natural gas, along with heightened concerns about political instability in some of the oil rich regions in the world, have led the Congress to place a higher priority on domestically produced energy and biobased products.

III. Background

In 1999, as required by section 504 of Executive Order 13101, ''Greening the Government through Waste Prevention, Recycling, and Federal Acquisition,'' the U.S. Department of Agriculture (USDA) Biobased Products Coordination Council (now called the Biobased Products and Bioenergy Coordination Council) published a notice in the **Federal Register** (64 FR 44185, Aug. 13, 1999) to solicit public comments on a process for considering items for inclusion on a USDA Biobased Products List and suggested criteria for including biobased items on that list. The Council was established by the Secretary of Agriculture and is comprised of USDA representatives with commercialization, legislative, marketing, procurement, rural development, research, and other technical expertise. Others consulted regarding the listing procedures described in the August 1999 notice included the Office of the Federal Environmental Executive, NIST, EPA, the Federal Trade Commission (FTC), environmental organizations, and agricultural organizations. Also advising USDA were Federal members of the Executive Order 13101 Inter-Agency Advisory Group.

The requirements of section 9002 differ from those of Executive Order 13101. For example, the Executive Order and section 9002 use slightly different definitions of the term ''biobased product.'' Another distinction is that the Executive Order encourages, but does not require, procurement of biobased products. Section 9002 establishes a mandatory procurement preference, with limited exceptions, for designated items. The Executive Order envisions a list of specific products to be promulgated, whereas section 9002 requires guidelines designating ''items which are or can be produced with biobased products'' and recommended procurement practices for both biobased products and items containing biobased products.

Under section 9002, the term ''biobased products'' refers to ''a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials.'' The term ''item'' refers to a subcategory or grouping of similar products containing biobased content. An item is populated by commercial and industrial products available for purchase by Federal agencies. An example of an item (or subcategory) under the ''Lubricants and functional fluids category'' discussed later in this document is hydraulic, power steering, and transmission fluids. Under Executive Order 13101, the term ''biobased product'' was used to mean what the term ''item'' means under section 9002.

USDA no longer intends to promulgate a list of biobased products as envisioned in Executive Order 13101. Rather, USDA will designate items that qualify for preferred procurement as required by section 9002.

The statutorily required elements of the section 9002 guidelines further distinguish the guidelines from the Executive Order list. Despite these differences, comments received in response to the 1999 proposed procedures to implement the biobased products list were taken into consideration when preparing proposed product categories and selection criteria for these proposed guidelines.

For purposes of identifying a Federal agency in implementing section 9002, we have chosen to use the definition of ''Federal agency'' found in the Federal Acquisition Regulation (48 CFR 2.101), *i.e.*, ''any executive agency or any independent establishment in the legislative or judicial branch of Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).''

Once USDA designates an item, responsibility for complying with section 9002 rests with Federal agencies. Responsibilities and implementation strategies of USDA, Federal agencies, the Office of Federal Procurement Policy, and manufacturers and vendors, respectively, are outlined briefly below in section IV.

This program is modeled on the EPA *Comprehensive Procurement Guideline for Products Containing Recovered Materials,* known as the Comprehensive Procurement Guideline (CPG), 40 CFR part 247, which designates items that are or can be made with recovered materials. The CPG implements section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962), as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. Executive Order 13101 also facilitated RCRA implementation. RCRA requires EPA to designate items that are or can be produced with recovered materials and to recommend practices for the procurement of designated items by procuring agencies. Executive Order 13101 directs EPA to designate the products in the CPG and to provide purchasing recommendations in Recovered Materials Advisory Notices (RMANs). Information on the CPG and the RMANs can be found on the Internet at *http://www.epa.gov/cpg.*

The legislative history of section 9002 suggests that Congress intended to use this program to speed the development of new markets for biobased products, rather than to support mature markets for products. Hence, USDA has crafted this program to focus on new market development. It is USDA's intention to exclude from this program biobased products it concludes have mature markets. USDA proposes to use a number of filters or tests to exclude products in what it defines as mature markets. If a product falls within an excluded group of products in any one filter, it is excluded from consideration under the program to implement section 9002. To be eligible for preferred procurement under section 9002, a product must be found eligible under each of these filters or tests. In the first test, silk, cotton and wool garments, household items, and industrial or commercial products are excluded, unless made with a substantial amount of a biobased plastic product. Also excluded are wood products made from traditionally harvested forest materials.

Biobased products marketed only in regional or in single specialized markets, rather than national markets, are not considered to be in mature markets for purposes of this program. Finally, products developed, or that have made significant market penetration, more recently than 1972 also are not considered to be in mature markets for purposes of this program. The first of several oil supply and price shocks, which occurred in the United States beginning at about 1972, was an

important impetus for beginning sustained serious new development of biobased alternatives for fossil based energy and other products in the United States. Hence, USDA has chosen to use 1972 as a dividing point between mature and emerging markets for this program.

IV. Responsibilities and Implementation Strategies under Section 9002

A. USDA's Responsibilities and Implementation Strategies

To carry out the requirements of section 9002, USDA will:

- Propose guidelines, after consultation with the EPA, GSA, and NIST, for the use of Federal agencies that indicate which items are or can be produced with biobased products and whose procurement by procuring agencies would carry out the objectives of this program;
- Determine in the guidelines, as appropriate, the minimum level of biobased material to be contained in a designated item;
- Propose items to be available for designation under the guidelines and explain the factors to be considered in their designation (availability, economic and technological feasibility, and life cycle costs);
- Identify in the guidelines the information about availability, relative price, performance, and environmental and public health benefits that will be provided to Federal agencies on items designated for preferred procurement; and
- Set forth recommended practices for the procurement of biobased products and designated items.

B. Federal Agencies' Responsibilities and Implementation Strategies

Following the issuance of final guidelines and the designation of items, Federal agencies would:

- Give a procurement preference, with certain exceptions, to designated items with the highest percentage of biobased products practicable, consistent with the guidelines and with maintaining sufficient competition;
- Incorporate in procurement specifications biobased item preferences consistent with the guidelines and the requirements of section 9002; and
- Establish an agency affirmative procurement program that includes a biobased products preference program, an agency promotion program to promote the preference program, and an annual review to monitor the effectiveness of the agency's procurement program.

C. Office of Federal Procurement Policy Responsibilities and Implementation Strategies

Following the issuance of final guidelines and subsequent regulatory action to designate items eligible for preferred procurement, the OFPP would:

- Work in cooperation with USDA to implement the biobased product procurement preference program;
- Coordinate the biobased products procurement policy with other Federal procurement policies; and
- Report to Congress every 2 years on the actions taken by Federal agencies in the implementation of the biobased product procurement program.

D. Manufacturers' and Vendors' Responsibilities and Implementation Strategies

Following the issuance of final guidelines and designation of items eligible for preferred procurement, firms desiring to participate in the program would:

- Determine whether products they intend to offer for Federal agency procurement qualify under the guidelines and fall within items designated by USDA for preferred procurement;
- Certify the percentage of biobased content in the commercial or industrial products that fall within designated items and are proposed by the manufacturer or vendor to be used in the performance of a contract; and
- When offering biobased products from an item that has been designated by the Secretary for preferred procurement by Federal agencies, certify that the biobased products to be used in the performance of the contract will comply with the applicable specifications or other contractual requirements.

V. Proposed Guidelines

The proposed guidelines would be contained in a new 7 CFR part 2902, ''Guidelines for Designating Biobased Products for Federal Procurement.'' The new part would be divided into two subparts, ''Subpart A—General,'' and ''Subpart B—Biobased Product Eligibility for Federal Preference.'' Subpart A would address the purpose and scope of the guidelines and their applicability, provide guidance on product availability and procurement, define terms used in the part, and address affirmative procurement programs and USDA funding for testing. Subpart B would address communicating information on qualifying biobased products and characteristics required for obtaining designated item status, and would set out the initial categories of designated items and minimum content. The proposed guidelines are discussed in detail below.

Proposed § 2902.1: Purpose and Scope

This section would introduce the guidelines by explaining that their purpose is to assist Federal agencies in complying with the requirements of section 9002 as they apply to the procurement of designated items. This section would also note that items designated in the guidelines are those items that are or can be produced with biobased products and whose procurement by Federal agencies will carry out the objectives of section 9002.

Proposed § 2902.2: Applicability to Federal Agencies and Exceptions to Procurement of Biobased Items

The procurement preference applies to all Federal agencies (as defined in this document) with respect to all procurement actions where the purchase price of the item exceeds $10,000 or where the quantity of such items (or of functionally equivalent items) purchased during the preceding fiscal year cost a total of $10,000 or more. Unlike the EPA program for procurement of items with recovered materials, section 9002 affords a procurement preference for biobased products only for procurement by Federal agencies. Thus, unlike RCRA (42 U.S.C. 6903(17)), the guidelines do not apply to State and local agencies using appropriated Federal funds to procure qualifying biobased items, and persons contracting with such agencies with respect to work performed under such contracts. USDA proposes to apply the $10,000 threshold as applicable to Federal agencies as a whole, rather than to agency subgroups such as regional offices or subagencies of a larger department or agency.

As noted previously, the proposed guidelines would not apply to any procurement by any Federal agency that is subject to the regulations issued by the EPA under section 6002 of the Solid Waste Disposal Act (40 CFR part 247), to the extent that the requirements of the guidelines are inconsistent with those regulations. Further, as provided by paragraph (i) of section 9002, these guidelines do not apply to the procurement of motor vehicle fuels or electricity.

Section 9002 requires Federal agencies to purchase designated biobased items unless the agency determines the items to be procured are not readily available within a reasonable

period of time, fail to meet the performance standards set out in applicable specifications or fail to meet reasonable performance standards of procuring agencies, or are available only at an unreasonable price.

Proposed § 2902.3: USDA Guidance on Item Availability and Procurement

The proposed guidelines would provide that, prior to designating items for preferred procurement under the section 9002 program, USDA would consider a number of factors. These factors are availability of the items and the economic feasibility and technological feasibility of using such items, including life cycle costs. Moreover, when designating items for preferred procurement under the program, USDA would provide the following information to Federal agencies on the items designated: availability, relative price, performance, and environmental and public health benefits of using the designated items.

In order to accomplish these requirements, USDA plans to initially rely, in part, on the information developed in a study by Concurrent Technologies Corporation (CTC) to address the statutory requirement for information on item availability. This study was conducted by CTC under a contract with the USDA Agricultural Research Service (ARS) as one of the activities undertaken by ARS in order to fulfill Executive Order 13101's requirement for the development of information on the market availability of biobased items. The CTC study can be viewed on the Web site *http://www.biobased.oce.usda.gov.*

Information on economic and technological feasibility of using biobased items and life cycle costs will be sought from industry. Because of the heterogeneity among commercial products with biobased content within any grouping of biobased items, and the heterogeneity of characteristics across item groupings, information will be sought on individual commercial products included within each type of item. Once this information is available on a sufficient number of such products within an item, the information will be evaluated and extrapolated to the generic item level and, if determined to be adequate to meet the requirements of section 9002, the item will be designated for preferred procurement.

Information on relative price, performance, and environmental and public health benefits that the Secretary is required to provide to Federal agencies will be gathered from manufacturers and vendors at the individual product level. This information, to be of maximum value to Federal agencies in making procurement decisions, must be considered at an individual product level.

USDA proposes to gather the above discussed information from industry using an Internet Web site to which manufacturers and vendors will be invited to voluntarily provide information, including availability on the commercial products with biobased content that they offer to Federal agencies. That Web site will provide business contact information, selected test information, and the information about the offered commercial products noted in this discussion. It will also group such information by item and indicate whether the item has been designated for preferred procurement under the section 9002 program. No items will be designated for preferred procurement until adequate information has been obtained from manufacturers and vendors to enable the Secretary to both designate the item and provide Federal agencies the required information about the item. USDA also believes that making the above noted information available on an individual commercial product basis on USDA's informational Web site will provide the greatest help to Federal agencies in making decisions on the purchase of biobased products.

USDA envisions the voluntary, web-based information system as the principal clearinghouse of information on manufacturer and vendor contact information, currently available products, and relevant product characteristics.

A standardized format with interactive capabilities will permit manufacturers and vendors to enter information into the Web site. The information is not expected to be either confidential or proprietary, but will instead be information a business firm would provide prospective purchasers. Data placed on the Web site will be password protected and can only be changed by the submitting manufacturer or vendor or by USDA. Moreover, password protection can extend, if necessary, to making individual product information accessible only to Federal agencies, USDA, and to the firm providing the information. USDA will ask manufacturers and vendors to annually review data provided on the Web site and to purge inaccurate or out-of-date information. In addition, USDA will periodically audit the information displayed and, where questions arise, contact the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information.

Federal agency procurement officials are encouraged to access the website to gather information on commercially available products within the scope of designated items, as a means of facilitating the acquisition of designated items, in furtherance of the requirements of section 9002.

After discussions with the Office of Management and Budget (OMB), USDA also has agreed to develop a model procurement policy and program for designated items to support its own procurement practices. USDA intends to work with OFPP to develop outreach and education programs, based on the USDA model procurement policy, to assist other Federal agencies in complying with the requirements of this program.

USDA seeks comments on the kinds of contact and product information that should be made available on its web-based information system, as well as comments on the appropriate components of a model procurement program for biobased items.

Proposed § 2902.4: Definitions

Section 2902.4 would define the terms used in the proposed guidelines. The definition of *biobased product* restates the statutory definition for that term in section 9001 of FSRIA. The section also defines several basic operational terms such as *Secretary, BEES, ASTM International, diluent, filler,* and *FSRIA.* The basis for many operative definitions is self-evident. The operative technical definitions reflect common industry usage. USDA is exercising its discretion in defining the remaining operational terms, most significantly *biological products, Federal agency, agricultural materials, biobased content, forestry materials,* and *small and emerging private business enterprises.*

Proposed § 2902.5: Preferred Procurement Program

Section 2902.5 sets out the procurement requirements or expectations that would apply to Federal agencies. In most respects, the information in this section reflects the responsibilities and implementation strategies discussed previously in this document (*see* section IV above). Section 2902.5(a) addresses procurement specifications and maximizing biobased content when procuring designated items. Section 2902.5(b) implements the requirement for Federal agencies to develop affirmative procurement programs. Section 2902.5(c) addresses the preference program component of the affirmative procurement programs.

Biobased content on items procured should be maximized subject to additional considerations. Section 9002(c) requires, with certain exceptions discussed above, that Federal agencies, when making procurement decisions on items designated in the guidelines, give preference to items composed of the highest percentage of biobased products practicable, consistent with maintaining a satisfactory level of competition. These guidelines propose minimum content levels of biobased products in designated items. It is recognized that the highest percentage of biobased content may not always result in the best item for Federal agencies, since other characteristics, such as performance, may not, in all cases, be positively correlated with higher content. Therefore, Federal agencies should interpret the requirement to mean procuring items with the highest biobased content consistent with other desired attributes such as availability, price, and performance.

Performance of designated items is important. USDA believes that evidence of performance by a qualifying biobased item in its intended use will be a very important factor in Federal agencies' decisions to procure that item. In most circumstances, biobased items can be manufactured with a blend of components that enable them to meet required performance standards. In some circumstances, prior experience with product performance or observation of its widespread use elsewhere will be sufficient evidence of performance to cause Federal agencies to procure the qualifying biobased item. In most other cases, especially for new items in the marketplace or for certain users of high performance items in Federal agencies, more formal evidence of performance may be required. When Federal agencies require more formal performance related information for their procurement decision, USDA encourages these agencies to request this information from manufacturers or vendors of designated items, focusing on performance against ASTM, ISO, Federal or military specifications, or other industry performance standards.

It is also important to set minimum requirements for biobased content of items at levels which are low enough to allow items produced with biobased products to compete with fossil energy based products in performance and economics, using current technology. While the statute requires Federal agencies, when purchasing designated items, to give preference to those that have the highest percentage of biobased content, that requirement must be considered in the context of whether the product meets required performance standards for the application in which it will be used.

USDA has statutory requirements to meet in designating items for preferred procurement. Section 9002 requires USDA to designate items that are or can be made with biobased products. In making the designation, the Secretary is required to consider, at a minimum, the availability of such items and the economic and technological feasibility of using such items, including life cycle costs. In addition, section 9002 requires the Secretary to provide information on availability, relative price, performance, and environmental and public health benefits to Federal agencies. No designation of items will be made until the above noted requirements are met. Only upon publication of a final rule in the **Federal Register** of designation of an item for preferred procurement will manufacturers and vendors of commercial products with biobased content that fall within the item definition be able to assert preferred procurement status for those products to Federal agencies.

USDA also will utilize the data entered by manufacturers and vendors on its Web site, on individual commercial products with biobased content, to develop information on availability, relative price, performance, and environmental and public health benefits that can be extrapolated to the generic item, the scope of which embraces those individual commercial products, prior to designating that item. This information will be made available to Federal agencies to satisfy the additional statutory information requirements (section 9002(e)(1)(C)) the Secretary is required to provide Federal agencies on designated items. Because the primary value of this information to Federal agencies is at the specific product level and in the ability to compare data across products within a designated item, USDA will encourage manufacturers and vendors to voluntarily post this product specific information on those products they are offering for preferred procurement.

USDA plans to rely on information from the previously discussed CTC study to determine the availability of items. USDA will evaluate information on relative price and performance of individual commercial products with biobased content, from the voluntary Web site, to develop the information on items and products the Secretary must consider in designating items and must make available to Federal agencies.

Information on environmental and public health benefits will be developed from voluntary information manufacturers and vendors provide on individual products. When voluntarily providing such information to USDA, this information must be based on a National Institute of Standards and Technology BEES (Building for Environmental and Economic Sustainability) analytical tool analysis of the product.

No designation of an item will be made by USDA until USDA has sufficient information to reasonably meet the information requirements the Secretary must address, as specified in the statute, and to provide the required information to Federal agencies about items designated in subsequent regulations. Based on the information considered, USDA will publish regulations in the **Federal Register** designating an item(s) under these guidelines. USDA will work to first designate items in categories having greatest likelihood of sale to Federal agencies.

Proposed § 2902.6: Funding for Testing

As explained above, section 9002 requires the Secretary to consider specific types of information in determining whether to designate an item under these guidelines. Also as explained above, section 9002 requires that the Secretary provide specific types of information to Federal agencies regarding designated items. As a means of obtaining some of the required information, section 9002(j) provides to the Secretary $1 million per year for each of the fiscal years 2002 through 2007 to support the testing of biobased products to carry out the provisions of the section. Section 9002(j) further provides that the Secretary, at her discretion, may ''give priority to the testing of products for which private sector firms provide cost sharing for the testing.'' 7 U.S.C. 8102(j)(2)(C).

For the first few years of this program, the Secretary is exercising her discretion to test products based on the USDA assessment of the best use of these funds to designate items most expeditiously under this program. USDA will work first to designate items in categories having the greatest likelihood of sale to Federal agencies. Additionally, should USDA obtain sufficient data from manufacturers' voluntary submissions or from other sources that very limited informational gaps exist to delay designation, USDA may target the use of these funds to fill in the limited data gaps to expedite designation of that item. USDA will enter into arrangements with entities capable of conducting tests to conduct tests of biobased content and BEES Analyses on

products identified by USDA as part of the process of gathering such information on a sufficient number of products to enable USDA to extrapolate such information to the item level. During this period, entities are welcome to propose cost-sharing for the testing of such items. However, USDA will not consider cost-sharing in deciding what products to test. Cost-sharing will be accepted to the extent consistent with USDA product testing decisions.

Once the program has achieved a critical mass of designated items, anticipated to occur within the next three years, USDA will exercise its discretion to make cost-sharing a more determinative factor in the selection of some products for testing. USDA will make some of the section 9002(j) funds available for testing of competitively-selected products for which private sector firms have offered cost sharing. USDA will make a public announcement to that effect at the time and solicit cost-sharing proposals. Paragraph 2902.7(b) sets forth how USDA proposes to exercise this discretion. USDA will consider cost-sharing proposals only for the BEES Analysis and performance testing of products. USDA does not intend to consider cost-sharing for testing to determine biobased content.

Cost sharing will be considered first for products of ''small and emerging private business enterprises.'' If funds remain to support further testing, a second tranche of applicants could be drawn from all other producers of biobased items. Proposals will be evaluated and assigned a priority rating. Priority ratings will be based on the following criteria:

- A maximum of 25 points will be awarded a proposal based on the market readiness.
- A maximum of 20 points will be awarded a proposal based on the potential size of the market for that product in Federal agencies.
- A maximum of 25 points will be awarded based on the financial need, for testing assistance, of the manufacturer or vendor.
- A maximum of 20 points will be awarded a proposal based on the product's prospective competitiveness in the market place.
- A maximum of 10 points will be awarded a proposal based on its likely benefit to the environment.

Projects will be funded in order of declining priority ratings (from highest to lowest) until available funds are committed. USDA could provide up to 50 percent of the cost of determining the life cycle costs and environmental and health effects using the NIST's BEES Analysis, up to a maximum of $5,000 of assistance per product. USDA could provide up to 50 percent of cost for performance testing, up to $100,000 of assistance per product for up to two performance tests (measures of performance) per product.

Pursuant to section 9002(j)(2)(B), USDA will enter into agreements with and provide the funds to entities that have the experience and special skills to conduct the testing. These entities will use the USDA and any private sector cost sharing funds to test the items. Products submitted in one year, but not funded for testing in that year, could be resubmitted to be considered for cost-sharing in the next year. USDA does not intend to provide financial assistance for testing to determine biobased content.

USDA seeks comments on possible methods of providing financial assistance for manufacturers and vendors for testing of individual commercial products with biobased content that are intended to qualify for preferred procurement by Federal agencies under this program.

Proposed § 2902.10: Communicating Information on Qualifying Biobased Products

Section 2902.10 of the proposed guidelines would provide general information applicable to the exchange of information regarding biobased products. In paragraph (a), we would reiterate that manufacturers and vendors of designated items have the responsibility to inform Federal procurement officials of items that comply with the guidelines, including the biobased content of the product, and recommend that Federal agencies, for their part, affirmatively seek this information. This paragraph would also point out the informational Web site referred to in § 2902.3 as a resource that can be utilized by both Federal agencies and manufacturers and vendors.

Manufacturers and vendors of biobased products that fall within an item (generic grouping) that has been designated by regulation for preferred procurement under the program are free to market those products to Federal agencies while claiming the preferred procurement status for the products under the program. Manufacturers and vendors must be able to certify to Federal agencies that their products are consistent with the definition of biobased product in section 2902.4. In addition manufacturers and vendors must be able to present third party test results that indicate the biobased products have at least the threshold amount of biobased feedstock content specified in the designating regulations for the item under which the biobased products fit.

Manufacturers and vendors must use the BEES analytical tool to provide information on life cycle costs and environmental and health benefits when asked for such information by Federal Agencies. In the case of products which are essentially the same formulation, but marketed under a variety of brand names, the manufacturers and vendors can simply refer to the underlying BEES Analysis data as the basis to demonstrate the life cycle costs, rather than conducting a BEES Analysis on each branded item. USDA is adopting the BEES Analysis method in order to establish a uniform methodology and platform for analysis of environmental and health effects and life cycle costs; doing so will enable Federal agencies to evaluate BEES results (scores) and life cycle costs across biobased products within a designated item.

When asked for performance data by Federal agencies, manufacturers and vendors are required to use test results obtained, for the individual products they offer for preferred procurement, from testing against industry accepted performance standards, which may include a Federal or Military Specification (ASTM, ISO, Military Specifications, *etc.*) for the product, in the use for which it is intended. The test must be conducted by a third party in an ASTM/ISO compliant test facility.

In paragraph (d), we would remind manufacturers and vendors that any claims regarding health and environmental benefits of their products should conform to the Federal Trade Commission (FTC) Guides for the Use of Environmental Marketing Claims, 16 CFR part 260. A copy can be obtained through FTC's Web site: *http://www.ftc.gov/ftc/legal/htm.* As explained in 16 CFR 260.5, any party making a claim concerning a product's environmental attribute ''must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim.''

Proposed § 2902.11: Characteristics Required for Obtaining Designated Item Status

Section 9002 envisions giving preference to items composed of the highest percentage of biobased products practicable. Hence, to further the purposes of section 9002, USDA believes it is important to guard against designating items for preferred procurement which contain only token amounts of biobased materials. However, for some uses of biobased products in the production of a

designated item, such as in the case of biobased adhesives used in the manufacture of furniture, it is recognized that the biobased content in the finished item may be relatively small, measured on a content basis. In these guidelines, USDA proposes that all qualifying items under this program must have at least 5 percent of its total manufactured value (measured after manufacture at the location of manufacture) made up of biobased product(s). USDA proposes that manufacturers and vendors self certify to Federal agencies that designated items meet this requirement. Moreover, manufacturers and vendors must be able to verify that certification from a third party test if asked to do so by Federal agencies or by USDA.

ASTM International is in the process of finalizing and adopting a method for determining biobased content. USDA anticipates that ASTM International will adopt a standard prior to USDA publishing its final rule. The method under consideration by ASTM International is a Radioisotope Standard Method to discriminate between ''old carbon'' from fossil resources and ''new carbon'' from renewable resources. A measurement of a product's contemporary $^{14}C/^{12}C$ content is determined relative to a standard reference material. Thus, in paragraph (c) of proposed § 2902.11, we would identify that ASTM method as the standard to be used by manufacturers and vendors in certifying biobased content.

Further, USDA proposes that manufacturers and vendors must utilize third party ASTM/ISO compliant test facilities using that testing standard method to determine the biobased content of their products offered for preferred procurement. Federal agencies and USDA may request verification of biobased content from manufacturers and vendors for products certified to qualify for preferred procurement.

In the case of products which are essentially the same formulation, but marketed under a variety of brand names, the manufacturers and vendors can simply refer to the underlying biobased content test data as the basis to demonstrate the biobased content, rather than conducting a biobased content test on each branded item.

USDA is proposing that biobased content be determined based on the weight of the biobased material (exclusive of water and other non-active ingredients, fillers, and diluents) divided by the total weight of the product and expressed as a percentage by weight.

Minimum biobased content requirements used in the proposed guidelines refer to the biobased portion of the product itself. For example, in a carpet using a biobased material as a carpet backing, the minimum biobased content indicated for the carpet refers only to the biobased backing. It is understood that the completed carpet, made up of several different materials, would have a lower biobased content than is specified in these guidelines for the biobased product (the carpet backing) itself. Minimum percentages used for various products in these guidelines refer to the biobased content of the product (such as carpet backing) itself, not to a finished product (the carpet) that might be fabricated using both a biobased product and other inputs, unless that is otherwise specified.

Section 2902.11 also would incorporate the filters discussed earlier in this preamble to exclude from this program those products having mature markets.

Proposed § 2902.12: Items and Minimum Biobased Content

The biobased products listed in the proposed guidelines would be grouped according to category, with each category consisting of one or more items; an item developed by a particular manufacturer is referred to as a product. That is, an item is made up of individual products and a category consists of items. For instance, ''Lubricants and Functional Fluids'' is a category. Hydraulic fluids is an item within that category, and ''ABC Hydraulic Fluid'' made by the ABC Company is a product.

As noted previously, the items and the indicated biobased content of items contained within the categories discussed in this preamble are based on the study conducted in 2002 for the USDA Agricultural Research Service by CTC. The final report of the study can be viewed at the Office of Energy Policy and New Uses, Reporters Building, Room 361, 300 7th Street, SW., Washington, DC 20024. To arrange for viewing, contact Marvin Duncan at 202–401–0532. USDA also has posted the study on its informational Web site, *http://www.biobased.oce.usda.gov.*

The items discussed below are intended to be the items that will be proposed for designation for preferred procurement by Federal agencies after the Secretary has sufficient information on availability of the items and the economic and technological feasibility of using such items, including life cycle costs. The information on availability of the items is determined from the CTC study from which the categories, items, and proposed minimum biobased content data were developed. However, items will not be designated for preferred procurement until the additional information required by section 9002 is considered by the Secretary. As items are designated for procurement preference, they would be added to § 2902.12 of the guidelines.

Comments proposing a new item should include information similar to that found in USDA's initial survey of the industry, including biobased products from which the items are derived, item characteristics, likely uses of the item, and percentage of biobased content of the items. In addition to new items proposed for inclusion in the guidelines, USDA is seeking comment on procedural issues, such as a process for proposing additional items, the review of such proposals, and what market information should be necessary to support the addition or deletion of an item. USDA particularly seeks public comment on the proposed categories and items, and the reasonableness of the biobased content percentages, discussed below.

Proposed § 2902.12 would contain items, grouped according to category, that are or can be produced with biobased products and provide the minimum biobased content for each listed item. It is anticipated that as the biobased product industry develops, new products will enter the market. As necessary, new items will be designated. USDA intends to periodically survey the industry to learn of new products entering the marketplace and to determine new items for designation. While § 2902.12 in these proposed guidelines contains no categories or items, given that none have yet been designated for procurement preference, the following paragraphs contain a discussion of future proposed categories and minimum content levels thus far identified. USDA seeks comments on the following categories, items (subcategories), minimum content levels based on manufactured value, and the minimum biobased content levels.

Adhesives Category

Biobased adhesives are chemical products used to join or bond two or more other materials together. A wide range of agricultural materials can be used to make biobased adhesives, including but not limited to starch from corn, potatoes, wheat, tapioca, and other plants; casein from skimmed milk; soy protein; soybean oil; vegetable gums; gelatin; livestock derivatives; tannins from woody biomass; and marine animal derivatives.

USDA proposes to include in this category both biobased adhesives and items embodying those adhesives. Items using such adhesives include book bindings, envelopes, stamps, medical application such as tapes and alternatives to sutures, doors, windows, paper bonds, corrugated paper boxes, lumber, furniture, and more. Biobased pressure sensitive adhesives have been developed for clear tape, duct tape, masking tape, labels, and a variety of disposable items. Another example of biobased adhesives is soy-based products used to glue wood to form finger-jointed lumber, glulam beams, I-joists, and other engineered wood products.

Proposed Minimum Content—Adhesives Category

Adhesive products are to have a minimum biobased content of 70 percent by weight of the adhesive. Biobased adhesive additives may also be used to reduce the total amount of phenol-formaldehyde and isocyanate-containing adhesives used to bond plywood and other wood panels. These products and wood products made with these products are proposed to qualify when the additive is used to reduce total adhesive content of the finished product by at least 25 percent and when the minimum content of the additive is at least 70 percent biobased material. Finished products in which 90 percent of all of the adhesives used in production are biobased would be designated as biobased products.

Construction Materials and Composites Category

The Construction Material Subcategory (or item) includes product applications containing biobased adhesives, such as plywood and finger jointed lumber; oriented strand board, medium density fiberboard, and hardboard; engineered wood building components, *e.g.*, laminated beams, trusses, finger jointed lumber, oriented strand lumber; moldings and trim; and decorative composites. Construction products include round wood; lumber; composites; and plastic-wood composite lumber and panels such as plywood, oriented strand board, medium density fiberboard, and hardboard that contains agricultural or wood-based materials.

The Composite Panels Subcategory (or item) is composed of nonstructural composite materials such as highly engineered blends of recycled paper products or agricultural wastes, biobased resins, and color additives can combine to provide a composite and composite panels. Product applications include furniture, tabletops, trim, store fixtures, awards, plaques, trophies, indoor signs, and other interior or nonstructural uses. Composite panel products include panels made from straw or other agricultural residues.

Molded Reinforced Composites subcategory (or item) products, such as decorative trim, shingles, or siding, may be made from bioplastic resins used to bind inorganic fibers such as fiber glass or agricultural fibers such as kenaf. These resins may be made from a combination of biobased materials and may be reacted with petro-based chemicals to achieve functional properties.

The Insulating Foams and Films Subcategory (or item) includes biobased polyurethane made from a soybean oil polyol, poly-lactides made from cornstarch, polyesters made from vegetable oils, and other bioplastic materials. Hundreds of products can employ these materials ranging from carpet backing to foam cushions; pads for furniture; automotive seats and dashboards; molded cases and covers for appliances; telephones; computers; and rigid insulating foams used to insulate refrigerators, freezers, coolers, and appliances. Each use may have different biobased content requirements.

This item also includes bioplastic rigid and soft foam, used to produce such products as fiber and foam insulation. Starch mixtures such as aqua gels or vegetable compounds can be added to concrete mixture during setting to reduce the density of concrete, and concrete mold release agents from vegetable oils are available products.

The Mixed System Products Subcategory (or item) is composed of products where specific component parts are designated as biobased (such as carpets and carpet squares with backing, attached pad, or face material that is biobased) but other components of the products may be from another product subcategory (item) or be non-biobased. The minimum content requirement may be applied to the biobased component rather than the complete product. An example would be the replacement of a portion of petroleum-based urethane for carpet backing with a percentage of soybean oil-based urethane.

In use, these items may include a large percentage of inert fillers and extenders which are not counted in computing total product weight. When determining the percent biobased content, calculations should be made on the weight of the component less excluded materials, and not on the weight of the total product.

Proposed Minimum Content—Construction Materials and Composites Category

The minimum biobased content requirement may be based on the weight of the biobased component rather than the complete material. USDA is providing guidance on the more prevalent products. As subsequent regulations to designate items for preferred procurement continue to evolve, more content information will be forthcoming. USDA particularly welcomes comments on adding additional subcategories to this section to more clearly define content requirements. The minimum biobased content of each item in this category must be:

Items	Minimum biobased content (%)
Construction material	85
Composite panels	70
Molded reinforced composites	10
Insulating foams and films	15
Components of mixed system products	20

Fibers, Paper, and Packaging Category

There is a broad range of agricultural crops, forest biomass, and livestock that contributes materials to this category including non-tree sources such as bamboo, corn stover, low-grade cotton, flax, kenaf, cereal and grain straws, sugar cane bagasse, switch grass, leaves, and poultry feathers; and wood from forest thinnings, saw dust, flour, shavings, chips, grindings, and curls from trees.

Fibers from biobased sources can be used in the manufacture of product containers such as boxes, drums, and pails for the storage or shipment of food or manufactured products. Biobased fibers can also be used as bulk packaging materials for filler and protection of stored or transported goods. Natural biobased fibers are very ductile and typically do not splinter. Their properties have been compared to carbon and glass fibers for use in fiberglass composites.

Fiber composites are created when biobased fibers are blended with molten plastic in ratios of up to 70 percent fiber by weight to make furniture, toys, and other molded items.

Composite packaging materials use an emerging technology that relies on a mix of organic and inorganic materials, such as starch and limestone, and sometimes include fibers and coating materials that are also biodegradable. These materials often use starch from potatoes, corn, or

other crops, and can sometimes be derived from reclaimed waste streams. Recent developments have also allowed for the development of non-rigid wrap materials and other food packaging innovations in addition to the sandwich ''clamshells'' made from starch and agricultural fibers.

Woven fiber products represent important uses of biobased fibers. A variety of biobased fibers can be spun or woven into items such as ropes, textiles, and yarns. For example, flax is a traditional textile fiber used to make linen, while other fibers, such as jute, are woven to make burlap for bags and coverings.

Packaging materials can be made from waste fibers described above that, if not used in the paper making process, might be sent to a landfill.

Paperboard and packaging products, strong lightweight honeycomb panels made from recycled and agricultural fibers, illustrate another use of biobased fibers. Panel items can also be made almost entirely from cereal straw residue and used in nonstructural applications such as furniture, cabinets, store displays, door panels, moldings, and other fixtures.

Items such as pillows and comforters are made from milkweed fibers mixed with goose down to create bedding materials.

Proposed Minimum Content—Fibers, Paper, and Packaging Category

Like the construction category above, this item application is very large and each application may have separate content requirements. The category may require additional subcategories, or the creation of new categories; for instance tree-free paper versus tree-derived paper. In this guideline, USDA has listed a few of the more common uses and encourages comment on content requirements for a wide range of uses. To be included in the biobased fiber, paper, and packaging category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Fibers	90
Fibers composites	30
Composite packaging materials	30
Woven fiber products	75
Packaging materials	80
Uncoated printing and writing papers	20
Coated printing and writing papers	20
Bristols	50
Newsprint	20
Sanitary tissues	30
Paperboard and packaging products	30
Other paper products	50

Fuel Additives Category

A variety of fuel additives can be made from agricultural and forest materials and can be used to help power vehicles, heat buildings, provide heat for steam for industrial process, and other applications. Fuel additives can be mixed or diluted with other materials or used as an additive to enhance certain properties of a fuel.

Raw material sources for these biobased liquid fuel additive items include processed products from agricultural crops such as corn; soy bean; rapeseed; canola; animal fat; wood; and crop and processing residues such as stalks, manure, used cooking oils, used wood, nonrecyclable paper and paper sludge, and hulls.

Raw material sources for solid fuel additive items include agricultural and forest materials such as wood and wood processing residues, formed wood residue; nonrecyclable papers, paper sludge, and other paper processing residues; grains, grain processing byproducts and residues; byproducts or residues from soy, cotton, and sugar processing; pelletized residues from livestock production and processing, including manures.

Ethanol is the most widely used biobased fuel additive. It is typically made by fermentation of an agricultural product or residue and can be used as an oxygenated additive and a source of octane in a formulation with other fuels. Another liquid biobased fuel additive is biodiesel. Biodiesel is defined as a mono-alkyl ester of vegetable oils or animal fats and can be use as a lubricity agent with low-sulfur conventional diesel fuel.

Biobased items that are solid fuels are typically ''formed'' for ease of handling into a wide variety of shapes and sizes including pellets, rolls, briquettes, and other forms. Combustible binders, which may both act as fuels or be blended with other primary fuels, allow the fuel to be formed into various shapes and sizes. Biobased and other binders, such as resins and propellants, are also used to facilitate ignition and combustion. Formed coal fines are one example of a solid fuel. Recovered coal fines can be formed into a variety of shapes and sizes, *e.g.*, pellets and briquettes, by using a biobased binder such as proteins or sugars derived from soy or milk, or a combination binder composed of biobased materials and other chemicals. Biobased binders typically comprise only a small part of the total solid fuel and can be derived from dairy byproducts and other agricultural sources. The binder would be considered a biobased fuel additive.

As noted previously, section 9002 and these guidelines do not apply to the procurement of motor vehicle fuels or electricity.

Proposed Minimum Content—Fuel Additives Category

To be included in this fuel additives category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Solid fuels	5
Liquid fuel additives	80

Landscaping Materials, Compost, and Fertilizer Category

This category includes materials and items associated with landscaping materials and compost. Many biobased items, such as construction materials, coatings, paper, fibers, and sorbents are compostable and reusable as landscaping materials.

Various agricultural crops and residues, including straws and short rotation woody crops, are the sources of landscaping materials. For the purposes of this category, woody materials are those obtained from activities such as forest thinning, fuel reduction in plantation stands, regenerated forest stands, intensively cultivated short rotation woody stands (*i.e.*, less than 10 years old), or from wood residue or recovered wood products.

Compost is derived from a managed process that decomposes and transforms organic material into a soil-like item called humus. Food scraps, leaves, paper, wood, livestock manures, and agricultural residues are organic materials that can be composted. Composting reduces the amount of waste that may go to a landfill and it produces a soil amendment that can improve the texture and fertility of the soil. Mulches and composted materials can be used to control moisture and nutrients in soils and reduce the potential for erosion. Other materials, such as agricultural and animal wastes, serve as fertilizers.

Items include landscaping materials such as bark, chips, mulch, and pine needles. Composted materials provide fertilizer and ground cover. These

materials may also be coated with biobased materials to provide color, retard biodegradation, or reduce loss from wind or water erosion.

Agricultural and animal wastes are fertilizers and may be in composted form or, in the case of manures, may be applied as fertilizers without further composting or processing.

Proposed Minimum Content—Landscaping Materials, Compost, and Fertilizer Category

To be included in the landscaping materials and compost category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Landscaping materials	100
Compost	100
Fertilizer	80

Lubricants and Functional Fluids Category

Biobased lubricants and functional fluids are important materials used to reduce friction between moving surfaces or between moving and stationary surfaces in engines and other machinery, to reduce wear and dissipate heat on those surfaces, and to provide other benefits such as corrosion protection. Items like 2-cycle engine oils can be formulated from biobased sources. These formulated lubricants are added to fuels used in 2-cycle engines found in lawnmowers, chainsaws, string trimmers, and other small machinery.

Biobased functional fluids are used as items that transfer heat and/or pressure to or from surfaces, reduce friction in machining operations, provide electrical insulation, and for many other purposes. There is a broad range of biobased lubricant and functional fluid items, each carefully designed to meet particular performance needs and applications. These materials often need to be replaced on a routine schedule to maintain their expected performance.

Biobased lubricants and functional fluids are typically made from multiple components, including one or more base stocks plus additives that enhance performance or extend the life of the item. A variety of agricultural-based oils can be used as biobased lubricants and functional fluids, including but not limited to canola, corn, rapeseed, soybean, sunflower, other plant materials, and animal fats. The base oil used must have sufficient natural or enhanced stability to be used as base stock for biobased lubricants. Biobased items in this category can be base stock (the starting material into which additives and other materials are blended to make the final formulated product), lubricant or functional fluid additive (materials that are used for specific performance benefits such as lower pour point, increased flash point, greater extreme pressure properties, a desired viscosity, or reduced foam), or formulated lubricant or functional fluid (the final product including base stock and all additives).

Vehicles, heavy machinery, and mobile equipment use lubricant items such as crankcase oils and greases, and functional fluids such as transmission fluids, coolants, power steering fluids, brake fluids, and others. Industrial equipment uses for lubricants include metal working fluids (cutting and drilling oils/lubricants, stamping and forming lubricants), hydraulic fluids, and process fluids (heat transfer and dielectric fluids). Total loss lubricants are released directly into the environment in such applications as rail and flange, wire rope, and chain saw lubricants; concrete and asphalt form release fluids; and 2-cycle engine oils.

Biobased lubricants can include bar, chain, and sprocket oils or general purpose lubricants used for general cleaning, lubrication, and corrosion prevention of metal parts including wheels, bearings, gears, rollers, chains, hinges, hand tools, guns, and sporting equipment.

Biobased hydraulic fluid items can be used in construction equipment, industrial pumps, and other equipment, as well as in specialty uses where incidental food contact may occur. These specialty fluids can also be used in transmission systems of vehicles and other transportation equipment.

Biobased functional fluid items include the fluids used to lubricate and cool equipment/metals and nonmetal parts during cutting and parts fabrication, as well as drilling and machining operations.

Biobased functional fluids can be used for specialty purposes items such as mold release agents that are applied to wood, metal, or plastic forms prior to pouring concrete to facilitate the removal of forms after concrete has cured, or to foundry molds prior to pouring the foundry metal to facilitate the removal of metal parts from the molds. These biobased items can also be used as dielectric fluids that are used in electric transformers to provide insulation and to dissipate heat generated by the transmission of electric current.

Proposed Minimum Content—Lubricants and Functional Fluids Category

To be included in this lubricants and functional fluids category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Crankcase oils (water cooled engines)	10
Crankcase oils (air cooled engines)	50
2-cycle engine oils	50
Fifth-wheel grease	40
Automotive and other metal complex grease	25
Total loss lubricants (wire rope, bar-chain, etc.)	50
Turbine and other industrial lubricants	50
Penetrating oils	50
General purpose and other	90
Hydraulic, power steering, transmission fluids	50
Brake fluids	20
Cutting, drilling, and tapping oils (neat use)	50
Metal working concentrates (for dilution)	30
Forming pastes and extreme pressure stamping	30
Concrete and asphalt release	70
Metal foundry and mold release	50
Transformer oil and dielectric fluids	70

Plastics Category

Most plastics are made from petroleum-based monomers and polymers. Biobased plastics from renewable resources are sometimes biodegradable and have positive life-cycle benefits. Biobased plastics can be derived from a wide variety of agricultural and forest materials in the form of starch, cellulose, and other polymers or synthesized from plant oil and process byproduct monomers.

Biobased plastic polymers include cellulose, the most plentiful carbohydrate since 40 percent of all organic matter in the world is cellulose; starch, found in corn, potatoes, wheat, tapioca, and other plants can be used for such nonfood items as paper, cardboard, textile sizing, and adhesives; collagen, the most abundant protein found in mammals, including gelatin used to make sausage casings, capsules for drugs and vitamin preparations, and other miscellaneous industrial applications, including photography; and casein, a commercial product derived mainly from milk, used in adhesives, binders, protective coatings, and other biobased items. Corn, soy, and wheat proteins are abundant and can be

used to make adhesives and coatings for paper and cardboard. Polyesters are produced by bacteria through fermentation processes and are used in biomedical applications.

The plastic materials made with biobased monomers, such as plant oils, propane diol, and lactic acid, can be made to closely resemble the molecular structures of petroleum-based plastics and provide particular performance and application benefits, *e.g.*, thermoplastic or thermoset characteristics, pressure sensitivity, elastomeric, or other characteristics. When used for disposable items such as food packaging, the biobased plastic packaging can be fully compostable.

Used in durable goods for insulation and cushioning, biobased plastics may be rigid for panels in appliances, flexible in cushions, or molded for automotive dashboards, for example. Examples of biodegradable plastic films are biofilms, plastic films made biodegradable by formulation with starch. Examples of durable films and coatings are components in durable goods such as automotive and construction equipment, tools, electrical equipment, and appliances. Water-soluble polymers are biobased items used in wastewater facilities and can help mining and heavy industry clean heavy metals from their wastewater. Examples of biodegradable/compostable molded plastic items are table flat ware, knives, forks, and spoons. Examples of durable molded plastic items and composites using biobased resins are thermoset automotive parts and equipment hoods and doors and access panels for farm and industrial equipment. Examples of molded composite items using biobased fibers are automotive parts combining petroleum-based resins with natural fibers, such as interior door panels and trunk liners. Examples of synthetic fibers from biobased raw materials are synthetic fibers, similar in function to nylon, woven into various textiles such as carpeting.

Proposed Minimum Content—Plastics Category

To be included in this bioplastics and biopolymers category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Biodegradable foams	50
Durable foams	15
Biodegradable films	25
Durable films and coatings	20
Water soluble polymers	50
Compostable molded products	75
Molded plastics and composites/biobased resins	10
Molded composites/biobased fibers	20
Synthetic fibers	50

Paints and Coatings Category

Paints and other types of coatings such as stains, varnishes, and sealants can be derived from agricultural materials. These coatings enhance the appearance and protect the materials onto which they are applied. The protective function includes reducing corrosion, water infiltration, weathering from sun and wind exposure, and other damage. Biobased paints and coatings are important alternatives to traditional paints and coatings that are derived from petroleum-based chemicals and metal pigments.

A wide variety of agricultural materials can be used to produce items for biobased paint and coatings applications, including: xanthan gum to help thicken latex paints and coatings, and to uniformly suspend zinc, copper, and other metal additives in corrosion control coatings; cellulose esters and ethers can be used to make lacquers and paints; guayule derived epoxy-amine can be used to make coatings for metal panels that help protect the metal from corrosion during exposure to fog and salt; corn, soy, wheat, and other proteins are used to make coatings for paper and cardboard; and epoxidized linseed oil and soybean oil can be used as plasticizers, as well as intermediate chemicals in the manufacture of paints.

Biobased paints and coatings have a wide range of item uses that include protection of seeds to enhance germination, marine coatings, concrete and wood sealers, stains, corrosion inhibitors, and polishes. Architectural coatings made from soybean and linseed oils constitute a significant portion of the coatings market. Industrial coatings made from vegetable oils have been the mainstay in architectural and industrial paints for corrosion prevention, weatherability, and ease of application.

Proposed Minimum Content—Paints and Coatings Category

To be included in the paints and coatings category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Formulated product	20

Solvents and Cleaners Category

Biobased solvents and cleaners are widely used as cleaners and de-greasers in manufacturing and other processes and as ingredients in adhesives, paints, and coatings. Solvent and cleaner applications are broad and include alternatives to petroleum chemicals such as mineral spirits, ketones, acetone, trichloroethylene, xylene, toluene, and methylene chloride. As a cleaning item, uses include fabric and textile cleaning; fruit and vegetable cleaning; removal of grease, tar, oil, stains, paints from concrete and metal surfaces; paint stripper from metals and wood; carpet and upholstery cleaner; solvent for inks, paints; agricultural chemicals such as fertilizers, herbicides and pesticides; graffiti remover; and industrial parts cleaning. Some biobased solvents may also be used as carrier solvents for paints, inks, lotions, insect repellents, polishes, and other uses.

Biobased solvents and cleaners are made from renewable agricultural materials including crops and livestock.

Diluent items made from soybean oil, linseed oil, and tung oil can reduce the viscosity of a paint or coating. These diluents can act as both a solvent and a resin, thus eliminating the need for volatile organic compounds (VOCs). These solvents can be used in a variety of specialty applications such as metal finishing and ink formulation.

Parts cleaning compounds can contain one or more biobased solvents that are formulated with other performance additives such as surfactants, biocides, and rheology agents. These items are used in manufacturing and fabrication operations for cleaning parts prior to assembly, or in repair operations such as automotive shops or jet aircraft engine repair. Printing ink removers can be formulated items used for the removal of ink from printing presses and other printing equipment, such as press and blanket washes and screen cleaners. Adhesive/mastic removers are generally formulated items designed to remove adhesives or mastics from machinery used in gluing applications or from surfaces where an adhesive or mastic has been applied, such as with tile removal. Paint strippers are generally formulated items designed to remove paints from wood or metal surfaces. Asphalt removal and release materials are formulated or neat solvent

items used to remove built up asphalt from machinery, or they can be used as a pre-spray for dump trucks to prevent sticking of asphalt to truck beds.

Hard surface cleaners include general purpose formulated items for the removal of greases and other dirt from metal, tile, glass, plastics, and hard surfaces. Glass cleaners are generally formulated items for the removal of dirt from glass surfaces with minimal or no film residues. Food machinery cleaners are formulated items used to remove accumulated greases and soils from metal and non-metal parts of food machinery (meat saws and slicers, vent fans, ovens, cooking vats, etc.), and should be approved for incidental food contact or certified by the manufacturer as safe. Textile cleaners are formulated items for the removal of heavy stains from textiles prior to institutional cleaning (dry cleaning or laundry). Graffiti removers are formulated items for the removal of graffiti (spray paint, markers, crayons, etc.) from metal and or wood surfaces. Concrete, stone, and masonry cleaners are formulated items that remove oil, grease, soot, and other soils from concrete driveways/sidewalks, stone, and masonry.

Hand cleaners and soaps are formulated items for the removal of heavy greases and dirt from skin. Laundry aids include stain removers and pre-washes for the treatment of stains on fabrics. Wood cleaners and polishes are formulated items for cleaning and polishing of wood surfaces and furniture.

Some biobased solvents are used as carrier solvents for paints, inks, lotions, insect repellents, polishes, and other uses.

Proposed Minimum Content—Solvents and Cleaners Category

To be included in this solvents and cleaners category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Formulated product	50
Neat product (concentrate)	100

Sorbents Category

Biobased sorbents are materials that are used to take up and hold liquids. A wide range of agricultural and forest materials can be used as biobased sorbents, including but not limited to wool, cotton and cotton linters, vegetable starch, kenaf, and agricultural residues such as corn stover and peanut hulls. The range of items produced includes products to collect oil and other environmental spills, collect blood and other fluids in medicinal and surgical applications, collect urine in diapers and incontinence products, and for animal bedding (including wood chips).

Sorbents can be placed in items such as containers, packages, gauzes, or other carriers to create a sorbent system. This aids in handling of the sorbent and application of the sorbent at a location to achieve greatest benefit. The sorbent carrier may be of a material other than a biobased item. For the purposes of this category, the biobased material is the ''active'' part of the sorbent system. Biobased items in this category must address the function of the entire product, *e.g.*, the sorbent itself as well as the casing or framework holding or enclosing the sorbent.

Plant starch contained within a cotton bag is an illustration of a sorbent system. While the plant starch is not the end product, it is the ''active'' ingredient in these sorbent systems. The USDA Agricultural Research Service developed a patented sorbent gel that would be a sorbent system. The gel is capable of absorbing hundreds of times its own weight in water and has been used in such items as seed coatings, wound dressings, automobile fuel filters, plastic barriers used at construction sites, and, most notably, in disposable diapers.

Proposed Minimum Content—Sorbents Category

The biobased sorbents product category is organized as two broad groups of items: sorbents and sorbent systems. A sorbent system involves the use of a sorbent (active ingredient) in combination with a non-active carrier or an active carrier. For example a disposable diaper is a carrier for a specialized absorbent material, which is the sorbent. To be included in the sorbents category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Sorbents	90
Sorbent systems	75

Plant and Vegetable Inks Category

Here the category and the item are one and the same. Plant and vegetable oils can be used to make a wide variety of biobased inks. Over 90 percent of all U.S. daily newspapers use at least some soy ink, made by blending soybean oil with pigments, resins, and waxes to make either black or color ink. Unlike petroleum inks, soy ink does not release VOCs into the atmosphere upon drying. Newspapers printed with soy ink are easier to recycle.

In 1994, the U.S. Congress enacted the ''Vegetable Ink Printing Act of 1994,'' Public Law 103–348, mandating that, when technologically feasible and price competitive, Federal lithographic printing be performed using ink containing minimum percentages of plant and vegetable oil. Plant and vegetable inks are not considered to be in mature markets because plant and vegetable inks did not have significant national market penetration prior to 1972.

Biobased inks can be provided in black and a variety of colors. These inks can be used to print a broad range of documents, including newspapers, magazines, brochures, business cards, and reports. The inks can also be used with a variety of specialty applications including stencils, textiles, labeling, as well as pens and other writing instruments.

Proposed Minimum Content—Plant and Vegetable Inks Category

To be included in the inks category, the minimum biobased content of each item must be:

Items by application	Minimum biobased content (%)
News inks—black	40
News inks—color	30
Sheet-fed inks	20
Forms inks	20
Heat-set inks	10
Specialty inks	20

VI. Plan for Future Development of Voluntary Labeling Program

Section 9002(h) directs USDA to establish a voluntary labeling program for biobased items. USDA will address requirements for the labeling program in a future rulemaking. However, in order to signal USDA thinking in this regard, the potential parameters of the labeling program are described here.

It is anticipated the labeling program will build on the requirements to qualify for preferred procurement of biobased items discussed in this current proposed regulation. Biobased products that qualify for preferred procurement would be eligible to qualify for use of the ''U.S.D.A. Certified Biobased Product'' label. Two additional criteria would determine eligibility to use the label. First, an analysis of life cycle costs and health benefits of the product would be required using NIST's BEES

(Building for Environmental and Economic Sustainability) analytical tool. This analysis would be conducted by NIST or by a third party authorized by NIST to conduct the BEES Analysis. Second, the product would have passed one or more tests against applicable ASTM, International Organization for Standardization (an international standards setting organization identified by the acronym ISO), Federal or military specifications, or industry performance standards by a third party ASTM/ISO compliant testing facility, and results of those tests would be available to Federal procurement officials.

USDA seeks comments on the potential direction of future regulation regarding a voluntary program for use of the label by manufacturers and vendors of biobased products and on the possibility of assessing a user fee to support the labeling program.

VII. Regulatory Information

A. Executive Order 12866, Regulatory Planning and Review

It is estimated the proposed rule, when finalized, will not have an annual effect on the economy of $100 million or more. This program will have only a relatively small effect on the economy for the foreseeable future. This rule does not propose to designate any items. Successive items will be designated for preferred procurement through subsequent rulemakings over a period of at least several years. The industry, itself, is still very small. Although this program is intended to spur development of the industry, that is likely to occur only over many years. Each time an item is proposed for designation, USDA will evaluate the economic effect of that designation, as well as the cumulative effect of that and previous item designations.

For the above reasons, this rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Although this program ultimately may have a direct impact on a substantial number of small entities, USDA has determined that this proposed rule will not have a direct significant economic impact on a substantial number of small entities. This rule will affect directly primarily Federal agencies. Private sector manufacturers and vendors of biobased products voluntarily may provide information to USDA through the means set forth in this proposed rule. However, the proposed rule imposes no requirement on manufacturers and vendors to do so, and does not differentiate between manufacturers and vendors based on size. USDA does not know how many small manufacturers and vendors may opt to participate at this stage of the program.

As explained above, when USDA issues a proposed rulemaking to designate items for preferred procurement under this program, USDA will assess the anticipated impact of such designations, including the impact on small entities. USDA anticipates that this program will impact small entities which manufacture or sell biobased products. For example, once items are designated, this program will provide additional opportunities for small businesses to manufacture and sell biobased products to Federal agencies. This program also will impact indirectly small entities that supply biobased materials to manufacturers. Additionally, this program may decrease opportunities for small businesses that manufacture or sell nonbiobased products or provide components for the manufacturing of such products. Again, USDA cannot assess these anticipated impacts on small entities until USDA proposes items for designation. This rule does not propose to designate any items.

The proposed rule will directly impact small entities by implementing a cost-sharing program which gives first consideration to proposals for products of ''small and emerging business enterprises.'' Submission of a proposal is voluntary and not limited to small entities. The direct impact would be beneficial for those entities whose products are selected for cost-sharing. Because of the limited amount of funds available for cost-sharing, the proposed ceilings on cost-sharing, and the anticipated breadth of any competition (not limited to a particular manufacturing sector and open to other than small entities), USDA does not anticipate that this cost-sharing competition would have a significant economic impact on a substantial number of small entities.

Accordingly, USDA hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. USDA invites comments from members of the public who believe that the proposed rule will have a significant economic impact on a substantial number of small entities.

C. Executive Order 12630

This rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

H. Executive Order 13175

The policies contained in this rulemaking do not have tribal implications and thus no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and the implementing Office of Management and Budget (OMB) regulations in 5 CFR part 1320, USDA has submitted the information collections contained in this proposed rule to the OMB for review under section 3507(d) of the Act. Comments addressing the proposed information collections should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Agriculture, Margaret Malanoski, 725 17th Street, NW., Room 10202, Washington, DC 20503.

Title: Guidelines for Designating Biobased Products for Federal Procurement

Abstract: USDA will collect information from biobased product manufacturers and vendors on a voluntary basis to support a website maintained by USDA for the use of those parties, as well as the use of Federal agencies and the public. Information to be requested will include identification of products offered for preferred procurement within a designated item, contact information for the manufacturer or vendor, and demographic information about the manufacturer or vendor that will assist Federal agencies in reporting on the performance of the preferred procurement program. In addition, information will be sought regarding availability of products within an item considered for designation; relative prices of the products; performance of the products against industry standards such as ASTM, ISO, Federal or military specifications, or other standards; and environmental and public health benefits using NIST's BEES analytical tool.

This information may be included on the website or a hotlink may be established to manufacturers' or vendors' websites to access the information. The information sought for this voluntary website is envisioned to be non-proprietary. Should proprietary information be provided, the website will be password protected making that accessible only to USDA, Federal agencies, and to the manufacturer or vendor that provided the information.

Estimate of respondent burden: Public reporting burden for the collection of information is estimated to average 50 hours per product. Reporting is voluntary on the part of manufacturers/vendors of biobased products.

Respondents: Biobased product manufacturers and vendors.

Estimated annual number of respondents: 200.

Estimated number of responses per respondent: 1.

Estimated total annual burden hours on respondents: 10,000.

USDA invites written comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimizing the burden of the collection of the 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.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE

1. The chapter heading of chapter XXIX is revised to read as set forth above.

2. A new part 2902 is added to chapter XXIX to read as follows:

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

Subpart A—General

Sec.
2902.1 Purpose and scope.
2902.2 Applicability.
2902.3 USDA guidance on item availability and procurement.
2902.4 Definitions.
2902.5 Preferred procurement program.
2902.6 Funding for testing.

Subpart B—Biobased Product Eligibility for Federal Preference

2902.10 Communicating information on qualifying biobased products.
2902.11 Characteristics required for obtaining designated item status.
2902.12 Items and minimum biobased content.

Authority: 7 U.S.C. 8102.

Subpart A—General

§ 2902.1 Purpose and scope.

(a) The purpose of the guidelines in this part is to assist Federal agencies in complying with the requirements of section 9002 of FSRIA, 7 U.S.C. 8102, as they apply to the procurement of the items designated in subpart B of this part.

(b) The guidelines in this part designate items that are or can be produced with biobased products and whose procurement by Federal agencies will carry out the objectives of section 9002 of FSRIA.

§ 2902.2 Applicability.

(a) The guidelines in this part apply to all procurement actions by Federal agencies involving items designated by USDA in this part, where the Federal agency purchases $10,000 or more worth of one of these items during the course of a fiscal year, or where the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. The $10,000 threshold applies to procuring agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger department or agency.

(b) The guidelines in this part do not apply to:

(1) Any procurement by any Federal agency that is subject to regulations of the Administrator of the Environmental Protection Agency under section 6002 of the Solid Waste Disposal Act (40 CFR part 247), to the extent that the requirements of this part are inconsistent with such regulations; or

(2) The procurement of motor vehicle fuels or electricity.

(c) FSRIA section 9002(c)(1) requires Federal agencies to procure designated items composed of the highest percentage of biobased products practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines. Federal agencies may decide not to procure such items if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

§ 2902.3 USDA guidance on item availability and procurement.

An informational USDA website implementing section 9002 can be found at: *http://www.biobased.oce.usda.gov*. USDA will maintain a voluntary web-based information site for manufacturers and vendors of designated items produced with biobased products and Federal agencies. Through this website, USDA

intends to provide information as to the availability, relative price, performance and environmental and public health benefits of the designated items. USDA encourages manufacturers and vendors to provide product, business contacts, and product information for designated items. USDA also encourages Federal agencies to utilize this website to obtain current information on designated items, contact information on manufacturers and vendors, and access to information on product characteristics relevant to procurement decisions.

§ 2902.4 Definitions.

These definitions apply to this part:

Agricultural materials. Agricultural-based, including plant, animal, and marine materials, raw materials or residues used in the manufacture of commercial or industrial, nonfood/nonfeed products.

ASTM International. ASTM International, a nonprofit organization organized in 1898, is one of the largest voluntary standards development organizations in the world with about 30,000 members in over 100 different countries. ASTM provides a forum for the development and publication of voluntary consensus standards for materials, products, systems, and services.

BEES. An acronym for ''Building for Environmental and Economic Sustainability,'' an analytic tool used to determine the environmental and health benefits and life cycle costs of items, developed by the U.S. Department of Commerce's National Institute of Standards and Technology, with support from the U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (*BEES 3.0, Building for Environmental and Economic Sustainability Technical Manual and User Guide*, NISTIR 6916, National Institute of Standards and Technology, U.S. Department of Commerce, October 2002). Also, see *http://www.bfrl.nist.gov/oae/software/bees_USDA.html* for a discussion of how biobased feedstocks are addressed in the BEES Analysis.

Biobased components. Any intermediary materials or parts that, in combination with other components, are functional parts of the biobased product.

Biobased content. The weight (or volume, where appropriate) of the biobased material in the product divided by the total weight (or volume, where appropriate) of the product, times 100 to yield the percent of biobased content. Total product weight may be calculated exclusive of water or other inactive ingredients, fillers and diluents.

Biobased product. A product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry and materials.

Biological products. Products derived from living materials other than agricultural or forestry materials.

Designated item. A category of products identified in § 2902.12 that is eligible for the procurement preference established under section 9002 of FSRIA.

Diluent. A substance used to diminish the strength, scent, or other basic property of a substance.

Engineered wood products. Products produced with a combination of wood, food fibers and adhesives.

Federal agency. Any executive agency or independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).

Filler. A substance added to a product to increase the bulk, weight, viscosity, strength, or other property.

Forest thinnings. The removal of trees from a dense forest, primarily to improve growth, enhance forest health, or recover potential mortality. To recover potential mortality means to remove trees that are going to die in the near future.

Forestry materials. Materials derived from the practice of planting and caring for forests and the management of growing timber. Such materials must come from short rotation woody crops (less than 10 years old), sustainably managed forests, wood residues, or forest thinnings.

Formulated product. A product that is prepared or mixed with other ingredients, according to a specified formula and includes more than one ingredient.

FSRIA. The Farm Security and Rural Investment Act of 2002, Pub. Law 107–171.

Ingredient. A component; part of a compound or mixture; may be active or inactive.

ISO. The International Organization for Standardization, a network of national standards institutes from 145 countries working in partnership with international organizations, governments, industries, business, and consumer representatives.

Neat product. A product that is made of only one ingredient and is not diluted or mixed with other substances.

Relative price. The price of a product as compared to the price of other products on the market that have similar performance characteristics.

Residues. That which remains after a part is taken, separated, removed, or designated; a remnant; a remainder; and, for this purpose, is from agricultural materials, biological products, or forestry materials.

Secretary. The Secretary of the United States Department of Agriculture.

Small and emerging private business enterprise. Any private business that employs 50 or fewer employees and has less than $1 million in projected annual gross revenues.

Sustainably managed forests. Practice of a land stewardship ethic that integrates the reforestation, management, growing, nurturing, and harvesting of trees for useful products while conserving soil and improving air and water quality, wildlife, fish habitat, and aesthetics.

§ 2902.5 Preferred procurement program.

(a) Within 1 year after the publication date of each designated item, Federal agencies that have the responsibility for drafting or reviewing specifications for items procured by Federal agencies shall ensure that their specifications require the use of designated items composed of biobased products, consistent with the guidelines in this part. The biobased content of a designated item may vary considerably from product to product based on the mix of ingredients used in its manufacture. In procuring designated items, the percentage of biobased content should be maximized, consistent with achieving the desired performance for the product.

(b) Within 1 year after the publication date of the guidelines in this part, each Federal agency shall develop a procurement program which will assure that items composed of biobased products will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement laws. Each procurement program shall contain:

(1) A preference program for purchasing designated items, (2) A promotion program to promote the preference program; and

(3) Provisions for the annual review and monitoring of the effectiveness of the procurement program.

(c) In developing the preference program, Federal agencies shall adopt one of the following options, or a substantially equivalent alternative, as part of the procurement program:

(1) A policy of awarding contracts to the vendor offering a designated item

composed of the highest percentage of biobased product practicable except when such items:

(i) Are not available within a reasonable time;

(ii) Fail to meet performance standards set forth in the applicable specifications, or the reasonable performance standards of the Federal agency; or

(iii) Are available only at an unreasonable price.

(2) A policy of setting minimum biobased products content specifications in such a way as to assure that the biobased products content required is consistent with section 9002 of FSRIA and the requirements of the guidelines in this part except when such items:

(i) Are not available within a reasonable time;

(ii) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(iii) Are available only at an unreasonable price.

§ 2902.6 Funding for testing.

(a) USDA will use funds to support testing for biobased content and conduct of the BEES Analysis for products within items USDA has selected to designate for preferred procurement through early regulatory action. USDA initially will focus on gathering the necessary test information on a sufficient number of products within an item (generic grouping of products) to support regulations to be promulgated to designate an item or items for preferred procurement under this program. USDA may accept cost sharing for such testing to the extent consistent with USDA product testing decisions. During this period USDA will not consider cost sharing in deciding what products to test. When USDA has concluded that a critical mass of items have been designated, USDA will exercise its discretion, in accordance with the competitive procedures outlined in paragraph (b) of this section, to allocate a portion of the available USDA testing funds to give priority to testing of products for which private sector firms provide cost sharing for the testing.

(b)(1) Subject to the availability of funds and paragraph (a) of this section, USDA will announce annually the solicitation of proposals for cost-sharing for the testing of biobased products to carry out this program. Information regarding the submission of proposals for cost sharing also will be posted on the USDA informational Web site, *http://www.biobased.oce.usda.gov.*

(2) Cost-sharing proposals will be considered first for products of small and emerging private business enterprises. If funds remain to support further testing, a second tranche of applicants may be drawn from all other producers of biobased items. Proposals will be evaluated and assigned a priority rating. Priority ratings will be based on the following criteria:

(i) A maximum of 25 points will be awarded a proposal based on the market readiness;

(ii) A maximum of 20 points will be awarded a proposal based on the potential size of the market for that product in Federal agencies;

(iii) A maximum of 25 points will be awarded based on the financial need for assistance of the manufacturer or vendor;

(iv) A maximum of 20 points will be awarded a proposal based on the product's prospective competitiveness in the market place;

(v) A maximum of 10 points will be awarded a proposal based on its likely benefit to the environment.

(3) Proposals will be selected in order of declining priority ratings (from highest to lowest) until available funds for the fiscal year are committed.

(4)(i) For products selected for BEES Analysis testing under this paragraph, USDA could provide up to 50 percent of the cost of determining the life cycle costs and environmental and health effects using the NIST's BEES Analysis, up to a maximum of $5,000 of assistance per product.

(ii) For products selected for performance testing under this paragraph, USDA could provide up to 50 percent of cost for performance testing, up to $100,000 of assistance per product for up to two performance tests (measures of performance) per product.

(5) For selected proposals, USDA will enter into agreements with and provide the funds directly to the testing entities.

(6) Proposals submitted in one fiscal year, but not selected for cost-sharing of testing in that year, may be resubmitted to be considered for cost-sharing in the following year.

Subpart B—Biobased Product Eligibility for Federal Preference

§ 2902.10 Communicating information on qualifying biobased products.

(a) Manufacturers and vendors are expected to provide relevant information to Federal agencies, upon request, with respect to product characteristics. USDA recommends that Federal agencies affirmatively seek this information. Manufacturers must be able to verify the biobased content in their products. The level of biobased content in the product is to be determined using the ASTM International standard that is a Radioisotope Standard Method to distinguish between carbon from fossil resources and that from renewable sources.

(b) Manufacturers and vendors must use the National Institute of Standards and Technology BEES (Building for Environmental and Economic Sustainability) analytical tool to provide information on life cycle costs and environmental and health benefits to Federal agencies, when asked.

(c) In assessing performance of qualifying biobased products, USDA requires that Federal agencies rely on results of performance tests using applicable ASTM International, International Organization for Standardization (ISO), Federal or military specifications, or other similarly authoritative industry test standards. Such testing must be conducted by a third party ASTM/ISO compliant laboratory.

(d) Manufacturers and vendors are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to the Federal Trade Commission Guides for the Use of Environmental Marketing Claims, 16 CFR part 260.

§ 2902.11 Characteristics required for obtaining designated item status.

(a) All qualifying items under this program must have at least 5 percent of their total manufactured value (measured after manufacture at the location of manufacture) made up of biobased product(s).

(b) Minimum biobased content requirements in § 2902.12 refer to the biobased portion of the product, and not the entire item. These requirements are in addition to the 5 percent total manufactured value requirement in paragraph (a) of this section.

(c) Manufacturers and vendors must utilize third party ASTM/ISO compliant test facilities using the ASTM International Radioisotope Standard Method to determine and certify the biobased content of their products offered for preferred procurement. Federal agencies and USDA may request verification of biobased content from manufacturers and vendors for products certified to qualify for preferred procurement.

(d)(1) Biobased content shall be determined based on the weight of the biobased material (exclusive of water and other non-active ingredients, fillers,

and diluents) divided by the total weight of the product and expressed as a percentage by weight.

(2) In the case of products that are essentially the same formulation, but marketed under a variety of brand names, the manufacturer or vendor may refer to the underlying biobased content test data as the basis to demonstrate the biobased content, rather than conducting a biobased content test on each branded product.

(e) Products having mature markets are excluded from this program. For purposes of this program, a product has a mature market if the product falls within any of the following groups:

(1) Silk, cotton and wool garments, household items, and industrial or commercial products unless made with a substantial amount of biobased plastic product.

(2) Wood products made from traditionally-harvested forest materials.

(3) Products having significant national market penetration prior to 1972.

§ 2902.12 Items and minimum biobased content.

USDA shall designate items that meet the criteria set forth in this part as eligible for the procurement preference. In designating items, USDA will group items by category and will identify the minimum biobased content for each listed item. As items are designated for procurement preference, they will be added to this section.

Dated: December 16, 2003.

Keith Collins,

Chief Economist, Department of Agriculture.

[FR Doc. 03–31347 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–GL–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15979; Airspace Docket No. 03–AEA–10]

Establishment of Class E Airspace; Lawrenceville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Lawrenceville, VA. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) to serve flights operating into Lawrenceville/Brunswick Municipal Airport (LVL) under Instrument Flight Rules (IFR) makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 20, 2004.

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 the docket number FAA–2003–15979/ Airspace Docket No. 03–AEA–10 at the beginning of your comments. You may also submit comments on the Internet at *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 Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building 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, Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

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, 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 No. FAA–2003–15979/Airspace Docket No. 03–AEA–10''. The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 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 for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace area at Lawrenceville, VA. The development of SIAPs to serve flights operating IFR into Lawrenceville/Brunswick Municipal Airport makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 700.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L dated September 2, 2003 and effective September 16, 2003, is proposed to be amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AEA VA E5, Lawrenceville, VA [NEW]

Lawrenceville/Brunswick Municipal Airport (Lat. 36°46′21″ N., long. 77°47′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Lawrenceville/Brunswick Municipal Airport.

* * * * *

Issued in Jamaica, New York on December 4, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31246 Filed 12–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–116664–01]

RIN 1545–BC15

Guidance Necessary to Facilitate Business Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations designed to eliminate regulatory impediments to the electronic filing of certain business income tax returns and other forms. Those regulations affect business taxpayers who file income tax returns electronically. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 18, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–116641–01), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–116641–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Nathan Rosen (202) 622–4910; concerning submissions of comments and/or requests for a hearing, Robin Jones (202) 622–3521 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 17, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility; The accuracy of the estimated burden associated with the proposed collection of information (*see* below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.170A–11T. Section 170 of the Code permits tax deductions, within limits, for charitable contributions by individuals and corporations. Section 170(a)(2) provides that under certain conditions, corporations may treat a charitable contribution as paid during the taxable year even if the contribution occurs in the following taxable year. Existing regulations provide that to invoke this provision, a corporation must submit with its income tax return a supporting statement and a copy of the board of directors' resolution authorizing the contribution. The proposed regulation eliminates the need to submit the resolution with the return, but provides that the supporting statement must identify the date of the resolution. This information regarding the timing of board action is required to be reported to help ensure that taxpayers properly document their entitlement to deductions for charitable contributions. The IRS cannot ascertain this information from the board resolution itself since, as noted above, taxpayers will no longer have to submit that document with their returns. The collection of information is mandatory. The likely respondents are for-profit corporations.

Estimated total annual reporting burden: 250,000 hours.

Estimated average annual burden hours per respondent: .25 hours.

Estimated number of respondents: 1,000,000

Estimated annual frequency of responses: annually

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301) designed to eliminate regulatory impediments to the electronic filing of certain income tax returns and other forms. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. The regulations generally affect taxpayers who must file any of the following forms: Form 926, ''Return by a U.S. Transferor of Property to a Foreign Corporation'' Form 972, ''Consent of Shareholder To Include Specific Amount in Gross Income''; Form 973, ''Corporation Claim for Deduction for Consent Dividends''; Form 982, ''Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)''; Form 1120, ''U.S. Corporation Income Tax Return''; Form 1120S, ''U.S. Income Tax Return for an S Corporation''; Form 1122, ''Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return''; Form 5471, ''Information Return of U.S. Persons With Respect To Certain Foreign Corporations''; Form 5712–A, ''Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)''; and Form 8832, ''Entity Classification Election.''

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information described above under the heading ''Paperwork Reduction Act'' does not affect corporations that elect to be taxed under Subtitle A, Chapter 1, Subchapter S of the Code. Moreover, requiring a corporation to report the information described above concerning board of directors' approval of certain charitable contributions imposes virtually no incremental burden in time or expense. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Nathan Rosen, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.170A–11 is amended by revising paragraph (b)(2) to read as follows:

§ 1.170A–11 Limitation on, and carryover of, contributions by corporations.

* * * * *

(b) * * *

(2) [The text of the proposed amendment to § 1.170A–11(b)(2) is the same as the text of § 1.170A–11T(b)(2) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 1.556–2 is amended by:

1. Revising paragraph (e)(2)(vii).
2. Adding paragraph (e)(3).

The revision and addition read as follows:

§ 1.556–2 Adjustments to taxable income.

* * * * *

(e) * * *

(2) * * *

(vii) [The text of the proposed amendment to § 1.556–2(e)(2)(vii) is the same as the text of § 1.556–2T(e)(2)(vii) published elsewhere in this issue of the **Federal Register**.

* * * * *

(3) [The text of the proposed amendment to § 1.556–2(e)(3) is the same as the text of § 1.556–2T(e)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 4. Section 1.565–1 is amended by revising paragraph (b)(3) to read as follows:

§ 1.565–1 General rule.

* * * * *

(b) * * *

(3) [The text of the proposed amendment to § 1.565–1(b)(3) is the same as the text of § 1.565–1T(b)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 5. Section 1.936–7 is amended by revising paragraph (b), Q.&A. 1 to read as follows:

§ 1.936–7 Manner of making elections under section 936(h)(5); special election for export sales; revocation of election under section 936(a).

* * * * *

(b) * * *

Q.& A. 1 [The text of the proposed amendment to § 1.936–7(b), Q.& A. 1 is the same as the text of § 1.936–7T(b), Q.& A. 1, published elsewhere in the issue of the **Federal Register**].

* * * * *

Par. 6. Section 1.1017–1 is amended by revising paragraph (g)(2)(iii)(B) to read as follows:

§ 1.1017–1 Basis reductions following a discharge of indebtedness.

* * * * *

(g) * * *

(2) * * *

(iii) * * *

(B) [The text of the proposed amendment to § 1.1017–1(g)(2)(iii)(B) is the same as the text of § 1.1017–1T(g)(2)(iii)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 7. Section 1.1368–1 is amended by revising paragraphs (f)(5)(iii) and (g)(2)(iii) to read as follows:

§ 1.1368–1 Distributions by S corporations.

* * * * *

(f) * * *

(5) * * *

(iii) [The text of the proposed amendment to § 1.1368–1(f)(5)(iii) is the same as the text of § 1.1368–1T(f)(5)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) * * *

(2) * * *

(iii) [The text of the proposed amendment to § 1.1368–1(g)(2)(iii) is the same as the text of § 1.1368–1T(g)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 8. Section 1.1377–1 is amended by revising paragraph (b)(5)(i)(C) to read as follows:

§ 1.1377–1 Pro rata share.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) [The text of the proposed amendment to § 1.1377–1(b)(5)(i)(C) is the same as the text of § 1.1377–1T(b)(5)(i)(C) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 9. Section 1.1502–21 is amended by revising paragraphs (b)(2)(iii), (b)(3)(i) and (b)(3)(ii)(B) to read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(b)(2)(iii) [The text of the proposed amendment to § 1.1502–21(b)(2)(iii) is the same as the text of § 1.1502–21T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) * * * (i) [The text of the proposed amendment to § 1.1502–21(b)(3)(i) is the same as the text of § 1.1502–21T(b)(3)(i) published elsewhere in this issue of the **Federal Register**].

(ii) * * *

(B) [The text of the proposed amendment to § 1.1502–21(b)(3)(ii)(B) is the same as the text of§ 1.1502–21T(b)(3)(ii)(B) published elsewhere in this issue of the **Federal Register**.

* * * * *

Par. 10. Section 1.1502–75 is amended by revising paragraph (h)(2) to read as follows:

§ 1.1502–75 Filing of consolidated returns.

* * * * *

(h) * * *

(2) [The text of the proposed amendment to § 1.1502–75(h)(2) is the same as the text of § 1.1502–75T(h)(2) published elsewhere in the issue of the **Federal Register**].

* * * * *

Par. 11. Section 1.1503–2 is amended by revising paragraphs (g)(2)(i), (g)(2)(iv)(B)(*3*)(*iii*) and (g)(2)(vi)(B) to read as follows:

§ 1.1503–2 Dual consolidated loss.

* * * * *

(g) * * *

(2) * * * (i) [The text of the proposed amendment to § 1.1503–2(g)(2)(i) is the same as the text of § 1.1503–2T(g)(2)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iv) * * *

(B) * * *

(*3*) * * *

(*iii*) [The text of the proposed amendment to § 1.1503–2(g)(2)(iv)(B)(*3*)(*iii*) is the same as the text of § 1.1503–2T(g)(2)(iv)(B)(*3*)(*iii*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(vi) * * *

(B) [The text of the proposed amendment to § 1.1503–2(g)(2)(vi)(B) is the same as the text of § 1.1503–2T(g)(2)(vi)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 12. Section 1.6038B–1 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(b) * * * (1) * * * (i) [The text of the proposed amendments to § 1.6038B–1(b)(1)(i) is the same as the text of § 1.6038B–1T(b)(1)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed amendment to § 1.6038B–1(b)(1)(ii) is the same as the text of § 1.6038B–1T(b)(1)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 13. The authority citation for part 301 continues to read as follows:

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

Par. 14. Section 301.7701–3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 301.7701–3 Classification of certain business entities.

* * * * *

(c) * * * (1) * * *

(ii) [The text of the proposed amendment to § 301.7701–3 (c)(1)(ii) is the same as the text of § 301.7701–3T(c)(1)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–31239 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SATS No. NM–043–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico proposes revisions to and additions of rules about definitions of permit modification, permit revision, and temporary cessation of operations; permit fees; administrative review of decisions; review of permits; requirements for permit modifications; public hearings for permit modifications; and additional requirements for temporary cessation of operations. New Mexico intends to revise its program to clarify ambiguities, provide additional safeguards, and improve operational efficiency.

This document gives the times and locations that the New Mexico program and proposed amendment to that program are available for your inspection, the comment period during

which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. January 20, 2004. If requested, we will hold a public hearing on the amendment on January 13, 2004. We will accept requests to speak until 4 p.m., m.d.t. on January 5, 2004.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Willis Gainier at the address listed below.

You may review copies of the New Mexico program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting Office of Surface Mining Reclamation and Enforcement (OSM's) Albuquerque Field Office.

Willis Gainer, Chief, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Ave., NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 248–5096, Internet address: *wgainer@osmre.gov.*

Bill Brancard, Director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Santa Fe, NM 87505, Telephone: (505) 476–3400.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer Telephone: 505–248–5096. Internet address: *wgainer@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.11, 931.15 and 931.30.

II. Description of the Proposed Amendment

By letter dated October 27, 2003, New Mexico sent us a proposed amendment to its program (administrative record No. 869) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

New Mexico proposes non-substantive editorial revisions at 19.8.13.1301.A(4) and E(1) New Mexico Annotated Code (NMAC) concerning permit revisions and hearing and notice requirements. New Mexico also proposes the following substantive revisions at:

19.8.1.7.P NMAC by adding definitions at, respectively, 19.8.1.7.P(8) and (9) NMAC, of ''permit modification'' to mean an alteration of the terms or requirements of a permit, which alteration is not a permit revision, and ''permit revision'' to mean a significant alteration of the terms or requirements of a permit, as identified in 19.8.13.1301.A NMAC;

19.8.1.7.T NMAC by adding a definition of ''temporary cessation of operations'' at 19.8.1.7.T(2) NMAC to mean the cessation of mining or reclamation operations for more than thirty days and where a reasonable expectation of the continuation of mining can be demonstrated by the permittee;

19.8.5.506.A, B, D, E, F, and G NMAC, concerning permit and exploration fees, to, respectively, (1) increase the original permit filing fee to $2,500 plus $25 per acre for estimated area to be disturbed during the first year of mining, (2) commencing the second year to increase the annual permit fee to $2,500 with an acreage fee of $25 per acre of disturbed permit area for which the bond has not been released, provided that $15,000 per year acreage fee is the maximum charge per year for all disturbance and cap the maximum annual fee at $17,500 and require that the annual fee be submitted with the annual report; (3) increase the fee for transferring a permit to $1000; (4) increase the fee for a revision that expands the size of the permit to $4000 plus $25 per acre for the estimated area to be disturbed during the first year of mining in the expansion area and to require a fee for all other permit revisions of $4000; (5) increase the fee for filing a notice of intention to explore to $100; and (6) increase the fee for filing an application for exploration of greater than 250 tons of coal;

19.8.12.1200.A NMAC, concerning administrative review of permit and exploration decisions, to (1) provide the permittee or any person with an interest which is or may be adversely affected by the decision regarding a permit modification an opportunity to request a hearing on the reasons for the final decision and (2) require that any request for a hearing on any permit and exploration decision be made in writing and state with reasonable specificity the reasons for the request and objection to the decision;

19.8.13.1300.B NMAC to clarify that, at any time, the Director of the New Mexico program may, by order, require reasonable revisions or modification of the approved permit;

19.8.13.1301.B, C, and E(2) NMAC to (1) clarify that the existing language at 19.8.13.1301.A NMAC defines when a permit revision is required and to require that a permit modification be obtained for all other changes to a permit not classified as a permit revision; (2) to state that the operator may not implement any permit revision or permit modification before obtaining the Director's written approval; and (3) state that (a) within 10 days after the filing of a complete application for a permit modification, the Director shall issue a decision approving or denying the application in whole or in part and promptly provide a written copy of the decision to the permittee and other interested parties and (b) within 30 days after the decision notification, the permittee or any person may request a formal hearing in regard to the Director's decision, in accordance with 19.8.12.1200 NMAC; and

19.8.20.2073 NMAC, concerning temporary cessation of operations, by adding new C, D, E, and F, to state (1) at the Director's discretion, the permittee may be directed to take other reasonable actions consistent with 19.8 NMAC to ensure the protection of public safety and the environment while the operation is under temporary cessation; (2) that no temporary cessation of mining and reclamation operations shall extend beyond the current permit term, unless the Director approves an extension of the temporary cessation during the permit renewal

process conducted in accordance with 19.8.13 NMAC; (3) that to continue under a temporary cessation beyond an existing permit term, the permittee must demonstrate that the mining operation has a reasonable expectation of continuing operations; and (4) that a temporary cessation may not be used to justify a lengthy delay to final reclamation or to preserve facilities beyond what may be considered appropriate for their use in association with an existing permit.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the New Mexico program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Albuquerque Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. NM–043–FOR,'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248–5091.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t., on January 5, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that state programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1)

considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 21, 2003.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–31343 Filed 12–18–03; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[CARB–106–DELb; FRL–7600–6]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to delegate to several California air pollution control agencies the authority to implement and enforce national emision standards for hazardous air pollutants as they apply to non-major sources.

DATES: Any comments on this proposal must arrive by January 20, 2004.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov.* Copies of the requests for delegation and other supporting documentation are available for public inspection (docket number A–96–25) at the Region IX office during normal business hours by appointment. Copies are also available at: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, Ariel Rios Bldg, 1200 Pennsylvania Ave, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 112(l) of the 1990 Clean Air Act, EPA is proposing to delegate national emission standards for hazardous air pollutants as they apply to non-major sources to the following local air pollution control agencies in California: Antelope Valley Air Quality Management District, Butte County Air Quality Management District, Kern County Air Pollution Control District, Mendocino County Air Quality Management District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District. In the Rules and Regulations section of this **Federal Register**, we are approving these delegations in a direct final action without prior proposal because we believe these delegations are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule. Please note that if we receive adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 2, 2003.

Matt Haber,

Acting Director, Air Division, Region IX.

[FR Doc. 03–31349 Filed 12–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3879; MB Docket No. 03–247, RM–10831]

Radio Broadcasting Services; Bald Knob and Greenbrier, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Caldwell Broadcasting, LLC, licensee of Station KKSY(FM), Channel 296C3, Bald Knob, Arkansas. Petitioner proposes to delete Channel 296C3 at Bald Knob, to allot Channel 296C3 at Greenbrier, Arkansas, and to modify the license of Station KKSY(FM) accordingly. Channel 296C3 can be allotted to Greenbrier in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.8 km (5.5 miles) northeast of Greenbrier. The coordinates for Channel 296C3 at Greenbrier are 35–17–28 North Latitude and 92–19–14 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before January 30, 2004, and reply comments on or before February 17, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Larry Crain, Managing Member, Caldwell Broadcasting, LLC, 425 West Capitol Avenue, Suite 1584, Little Rock, Arkansas 72201.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–247, adopted December 3, 2003 and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, D.C. 20554, telephone (202)863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Bald Knob, Channel 296C3, and by adding Greenbrier, Channel 296C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–31258 Filed 12–18–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 120303A]

Fisheries of the Exclusive Economic Zone off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS proposes to apportion amounts of the reserve to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to account for previous harvest of the total allowable catch (TAC). It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time, January 2, 2004.

ADDRESSES: Comments must be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Comments also may be sent via facsimile (fax) to 907 586 7557. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Administrator, Alaska Region, NMFS, has determined that the initial TACs specified in the final 2003 harvest specifications (68 FR 9907, March 3, 2003) for Greenland turbot in the Bering Sea subarea and arrowtooth flounder, yellowfin sole and Alaska plaice in the BSAI need to be supplemented from the non-specified reserve in order to continue operations and account for prior harvest.

Therefore, in accordance with § 679.20(b)(3), NMFS proposes to apportion from the reserve to the TACs for the following species: Bering Sea subarea - 100 metric tons (mt) to Greenland turbot; BSAI - 3,000 mt to Arrowtooth flounder, 3,500 mt to yellowfin sole, Alaska plaice - 750 mt. These proposed apportionments are consistent with § 679.20(b)(1)(ii) and do not result in overfishing of a target species because the revised TAC's are equal to or less than specifications of acceptable biological catch (68 FR 9907, March 3, 2003).

Classification

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 679.20 (b)(3)(iii)(A) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the agency from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the reserves to the affected, ongoing fisheries, thus preventing full utilization of the TAC and reducing the public's ability to use and enjoy the fishery resource. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 13, 2003.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment. Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action to the above address until January 2, 2004.

This action is required by 50 CFR 679.20 and is exempt from review under Executive Order 12866.

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

Dated: December 12, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–31340 Filed 12–18–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 244

Friday, December 19, 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

Animal and Plant Health Inspection Service

[Docket No. 03–110–1]

Saltcedar; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental assessment relative to the control of saltcedar (*Tamarix* spp.). The draft environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous leaf beetle, *Diorhabda elongata*, into the environment to reduce the severity of saltcedar infestations in 14 western States. We are making the draft environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before January 20, 2004.

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. 03–110–1, 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. 03–110–1. 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. 03–110–1'' on the subject line.

You may read any comments that we receive on the environmental assessment 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: Mr. Robert Richard, Western Region Program Manager, PPQ, APHIS, 2150 Centre Avenue Building B, Fort Collins, CO 80526–8117; (970) 494–7565.

SUPPLEMENTARY INFORMATION:

Background

Saltcedar (*Tamarix* spp.), also known as tamarisk, is a dense, deciduous shrub or small tree, indigenous to Asia, with the potential to significantly affect native vegetation throughout much of the United States. Saltcedars have long tap roots that allow them to access deep water tables and interfere with natural aquatic systems. The saltcedar is an aggressive colonizer, disrupting native plant communities and degrading native wildlife habitat by replacing native plant species, monopolizing limited water sources, and increasing the frequency, intensity and effect of fires and floods.

A single mature saltcedar may produce hundreds of thousands of seeds between April and October. The seeds are then dispersed by wind and water throughout the growing season, germinating within 24 hours of moistening. Seedlings are tolerant of water, saline soils, and drought and may grow by as much as a foot a month.

Saltcedar was first introduced into the United States from Asia in the early 1800s. The plant has been used for windbreaks, as ornamentals, and for erosion control. By 1850, saltcedar had infested river systems and drainages in the southwest. By 1938, infestations were found from Florida to California and as far north as Idaho. Saltcedar continues to spread rapidly and currently infests water drainages and areas throughout the United States, including the following western States: Colorado, North Dakota, South Dakota, Iowa, Nebraska, Nevada, Kansas, Missouri, Montana, Idaho, Oregon, Washington, Utah, and Wyoming.

As a result of rising infestation levels, the Animal and Plant Health Inspection Service has prepared a draft environmental assessment (EA) relative to the environmental release of the nonindigenous saltcedar leaf beetle (*Diorhabda elongata*) into the 14 western States listed above in order to reduce the severity and extent of saltcedar infestation in those areas.

The saltcedar leaf beetle is native to the Mediterranean region and central and middle Asia. All stages of saltcedar leaf beetle larvae feed on saltcedar foliage. As adults, the beetles continue to feed on saltcedar foliage. Saltcedar leaf beetles have been known to completely defoliate large areas of saltcedar. Release of this insect into the environment is expected to produce a gradual reduction in the size of saltcedar plants and in foliage cover and density of saltcedar stands.

APHIS' review and analysis of the proposed action and its alternatives are documented in detail in a draft EA entitled, ''Proposed Program for Control of Saltcedar (*Tamarix* spp.) in Fourteen States'' (November 2003). We are making the draft EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The draft EA may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppqdocs.html.* You may request paper copies of the draft EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the draft EA when requesting copies. The draft EA is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The draft EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3)

USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS'' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 15th day of December 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–31311 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice—Availability of appealable decisions; legal notice for availability for comment of decisions that may be appealable under 36 CFR part 215.

SUMMARY: Responsible Officials in the Southwestern Region will publish notices of availability for comment and notices of decisions that may be subject to administrative appeal under 36 CFR part 215. These notices will be published in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5, 215.6, and 215.7, such notice shall constitute legal evidence that the agency has given timely and constructive notice for comment and notice of decisions that may be subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for the purpose of publishing legal notices for comment and decisions that may be subject to appeal under 36 CFR part 215 shall begin December 19, 2003 and continue until further notice.

ADDRESSES: Southwestern Region, ATTN: Regional Appeals Coordinator, 333 Broadway SE, Albuquerque, NM 87102–3498.

FOR FURTHER INFORMATION CONTACT: Christina Gonzalez, 505–842–3219.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Southwestern Region will give legal notice of decisions that may be subject to appeal under 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice for comment and for decisions that may be subject to administrative appeal. As provided in 36 CFR 215.15, the time frame for appeal shall be based on the date of publication of a notice for decision in the primary newspaper.

Notice by Regional Forester of Availability for Comment and Decisions affecting New Mexico Forests: ''Albuquerque Journal'', published daily in Albuquerque, Bernalillo County, New Mexico, for comment and decisions affecting National Forest System Lands in the State of New Mexico and for any decisions of Region-wide impact.

Notice by Regional Forester of Availability for Comment and Decisions affecting Arizona Forests: ''The Arizona Republic'' published daily in Phoenix, Maricopa County, Arizona, for comment and decisions affecting National Forest System lands in the State of Arizona and for any decisions of Region-wide impact.

Notice by Regional Forester of Availability for Comment and Decisions affecting National Grasslands in New Mexico, Oklahoma, and Texas: Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico: ''Union County Leader'', published weekly on Wednesday in Clayton, Union County, New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma: ''Boise City News'', published weekly on Wednesday in Boise City, Cimarron County, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas: ''The Dalhart Texan'', published on Tuesday and Saturday in Dalhart, Dallam County, Texas. Black Kettle National Grassland in Roger Mills County, Oklahoma: ''Cheyenne Star'', published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma. Black Kettle National Grassland in Hemphill County, Texas: ''The Canadian Record'', published weekly on Thursday in Canadian, Hemphill County, Texas. McClellan Creek National Grassland in Gray County, Texas: ''The Pampa News'', published daily in Pampa, Gray County, Texas.

Arizona National Forests

Apache-Sitgreaves National Forests

Notice by Forest Supervisor of Availability for Comment and Decisions: ''The White Mountain Independent'', published Tuesday and Friday in Show Low and Navajo County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Alpine District: ''The White Mountain Independent'', published Tuesday and Friday in Show Low and Navajo County, Arizona. Black Mesa District: ''The White Mountain Independent'', published Tuesday and Friday in Show Low and Navajo County, Arizona. Clifton District: ''Copper Era'', published weekly on Wednesday in Clifton, Greenlee County, Arizona. Lakeside District: ''The White Mountain Independent'', published Tuesday and Friday in Show Low and Navajo County, Arizona. Springerville District: ''The White Mountain Independent'', published Tuesday and Friday in Show Low and Navajo County, Arizona.

Coconino National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: ''Arizona Daily Sun'', published daily, in Flagstaff, Coconino County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Mogollon District: ''Arizona Daily Sun'', published daily, in Flagstaff, Coconino County, Arizona. Peaks District: ''Arizona Daily Sun'', published daily in Flagstaff, Coconino County, Arizona. Red Rock District: ''Red Rock News'', published Wednesday and Friday in Sedona, Coconino County, Arizona.

Coronado National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: ''The Arizona Daily Star'', published daily, in Tucson, Pima County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Douglas District: ''Daily Dispatch'', published Tuesday–Saturday, and Sunday in Douglas, Cochise County, Arizona. Nogales District: ''Nogales International'', published on Tuesday and Friday in Nogales, Santa Cruz County, Arizona. Sierra Vista District: ''Sierra Vista Herald'', published Sunday–Friday, in Sierra Vista, Cochise County, Arizona. Safford District: ''Eastern Arizona Courier'', published weekly on Wednesday, in Safford, Graham County, Arizona. Santa Catalina District: ''The Arizona Daily Star'', published daily, in Tucson, Pima County, Arizona.

Kaibab National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: ''Arizona Daily Sun'',

published daily, in Flagstaff, Coconino County, Arizona.

Notice by District Ranger of availability for Comment and Decisions: North Kaibab District: ''Arizona Daily Sun'', published daily, in Flagstaff, Coconino County, Arizona. Tusayan District: ''Arizona Daily Sun'' published daily, in Flagstaff, Coconino County, Arizona. Williams District: ''Arizona Daily Sun'', published daily, in Flagstaff, Coconino County, Arizona

Prescott National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: ''Prescott Courier'', published daily in Prescott, Yavapai County, Arizona.

Notice by Forest Supervisor of Availability for Comment and Decisions: Bradshaw District ''Prescott Courier'', published daily in Prescott Yavapai County, Arizona. Chino Valley District: ''Prescott Courier'' published daily in Prescott, Yavapai County, Arizona. Chino Valley District: ''Prescott Courier'', published daily in Prescott, Yavapai County, Arizona. Verde District: ''Prescott Courier'', published daily in Prescott, Yavapai County, Arizona.

Tonto National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: ''East Valley Tribune'' and ''Scottsdale Tribune'', published daily in Mesa, Maricopa County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Cave Creek District: ''Scottsdale Tribune'', published daily in Mesa, Maricopa County, Arizona. Globe District: ''Arizona Silver Belt'', published weekly on Wednesday in Globe, Gila County, Arizona. Mesa District: ''East Valley Tribune'', published daily in Mesa, Maricopa County, Arizona. Payson District: ''Payson Roundup'', published biweekly on Tuesday and Friday in Payson, Gila County, Arizona. Pleasant Valley District: ''Payson Roundup'', published biweekly on Tuesday and Friday in Payson, Gila County, Arizona. Tonto Basin District: ''Payson Roundup'', published biweekly on Tuesday and Friday in Payson, Gila County, Arizona.

New Mexico National Forests

Carson National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: ''The Taos News'', published weekly on Thursday in Taos, Taos County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions: Canjilon District: ''Rio Grande Sun'', published Wednesday in Espanola, Rio Arriba County, New Mexico. El Rito District: ''Rio Grande Sun'', published Wednesday in Espanola, Rio Arriba County, New Mexico, Jicarilla District: ''Farmington Daily Times'', published daily in Farmington, San Juan County, New Mexico. Camino Real District: ''The Taos News'', published weekly on Thursday in Taos, Taos County, New Mexico. Tres Piedras District: ''The Taos News'', published weekly on Thursday in Taos, Taos County, New Mexico. Questa District: ''The Taos News'', published weekly on Thursday in Taos, Taos County, New Mexico.

Cibola National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions affecting lands in New Mexico, except the National Grasslands: ''Albuquerque Journal'', published daily in Albuquerque, Bernalillo County, New Mexico.

Notice by Forest Supervisor of Availability for Comment and Decisions affecting National Grasslands in New Mexico, Oklahoma and Texas: Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico: ''Union County Leader'', published weekly on Wednesday in Clayton, Union County, New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma: ''Boise City News'', published weekly on Wednesday in Boise City, Cimarron County, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas: ''The Dalhart Texan'', published on Tuesday and Saturday in Dalhart, Dallam County, Texas. Black Kettle National Grassland, in Roger Mills County, Oklahoma: ''Cheyenne Star'', published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma. Black Kettle National Grassland, in Hemphill County, Texas: ''The Canadian Record'', published weekly on Thursday in Canadian, Hemphill County, Texas. McClellan Creek National Grassland, in Gray County, Texas: ''The Pampa News'', published daily in Pampa, Gray County, Texas.

Notice by District Ranger of Availability for Comment and Decisions: Mt. Taylor District: ''Cibola County Beacon'', published on Tuesday and Friday in Grants, Cibola County, New Mexico. Magdalena District: ''Defensor-Chieftain'', published Wednesday and Saturday in Socorro, Socorro County, New Mexico. Mountainair District: ''Mountainview Telegraph'', published weekly on Thursday in Tijeras, Bernalillo County, New Mexico. Sandia District: ''Albuquerque Journal'', published daily in Albuquerque, Bernalillo County, New Mexico. Kiowa National Grassland: ''Union County Leader'', published weekly on Wednesday in Clayton, Union County, New Mexico. Rita Blanca National Grassland: ''Boise City News'', published weekly on Wednesday in Boise City, Cimarron County, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas: ''Dalhart Texan'', published on Tuesday and Saturday in Dalhart, Dallam County, Texas. Black Kettle National Grassland: ''Cheyenne Star'', published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma. Black Kettle National Grassland: ''The Canadian Record'', published weekly on Thursday in Canadian, Hemphill County, Texas. McClellan Creek National Grassland: ''The Pampa News'', published daily in Pampa Gray County, Texas.

Gila National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: ''Silver City Daily Press'', published Monday–Saturday in Silver City, Grant County, New Mexico.

Notice by District Ranger of Availability for Comment and Decision: Black Range District: ''The Herald'', published on Tuesday, in Truth or Consequences, Sierra County, New Mexico. Quemado District: ''Silver City Daily Press'', published Monday–Saturday in Silver City, Grant County, New Mexico. Reserve District: ''Silver City Daily Press'', published Monday-Saturday in Silver City, Grant County, New Mexico. Glenwood District: ''Silver City Daily Press'', published Monday-Saturday in Silver City, Grant County, New Mexico. Silver City District: ''Silver City Daily Press'', published Monday-Saturday in Silver City, Grant County, New Mexico. Wilderness District: ''Silver City Daily Press'', published Monday-Saturday in Silver City, Grant County, New Mexico.

Lincoln National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: ''Alamogordo Daily News'', published daily in Alamogordo, Otero County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions: Sacramento District: ''Alamogordo Daily News'', published daily in Alamogordo, Otero County, New Mexico. Guadalupe District: ''Carlsbad Current Argus'', published daily except Saturday, in Carlsbad, Eddy County, New Mexico. Smokey

Bear District: ''Ruidoso News'', published Wednesday and Friday in Ruidoso, Lincoln County, New Mexico.

Santa Fe National Forest

Notice by Forest Supervisor of Availability Comment and Decisions: ''Albuquerque Journal'', published daily in Albuquerque, Bernalillo County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions: Coyote District: ''Albuquerque Journal'', published daily in Albuquerque, Bernalillo County, New Mexico. Cuba District: ''Albuquerque Journal'', published daily in Albuquerque, Bernalillo County, New Mexico. Espanola District: ''Albuquerque Journal'', published daily in Albuquerque, Bernalillo County, New Mexico. Jemez District: ''Albuquerque Journal'', published daily in Albuquerque, Bernalillo County, New Mexico. Pecos-Las Vegas District: ''Albuquerque Journal'', published daily in Albuquerque, Bernalillo County, New Mexico.

Dated: December 8, 2003.

Abel Camarena,

Deputy Regional Forester, Southwestern Region.

[FR Doc. 03–31356 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Washington, DC, February 26–28, 2004. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held February 26–28, 2004.

ADDRESSES: The meeting will be held at the Hotel Monaco, 700 F Street, NW, Washington, DC. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, P.O. Box 1003, Sugarloaf, CA 92386–1003. Individuals may fax their names and proposed agenda items to (909) 585–9527.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Urban and Community Forestry Staff, (909) 585–9268.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided.

Dated: December 15, 2003.

Joel D. Holtrop,

Deputy Chief, State and Private Forestry.

[FR Doc. 03–31316 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee (RAC)

AGENCY: USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet on the following dates in Redding, California. The purpose of the meeting will be to discuss committee actions and to review projects to nominate for approval consideration.

DATES: The meeting will be from 8 a.m. to noon on:

- January 7, 2004
- February 4, 2004
- March 3, 2004
- April 7, 2004
- May 5, 2004
- June 2, 2004
- July 7, 2004
- August 4, 2004
- September 1, 2004
- October 6, 2004
- November 3, 2004
- December 1, 2004

ADDRESSES: The meeting will be held at USDA Service Center, 3644 Avtech Parkway.

FOR FURTHER INFORMATION CONTACT: Kevin McIver, coordinator, USDA Forest Service, (530) 226–2595 or (530) 226–2500. E-mail: *kmciver@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Discussion is limited to Forest Service staff and committee members. However, time may be provided for public input, giving individuals the opportunity to address the committee.

Dated: December 8, 2003.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 03–31274 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on January 6, 2004, in Crescent City, California. The purpose of the meeting is to discuss the selection of title II projects under Pub. L. 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on January 6, 2004, from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington Boulevard, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The committee will hear the status of Title II projects funded over the last two years. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 12, 2003.

William D. Metz,

Acting Forest Supervisor.

[FR Doc. 03–31275 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of Timber Sale Contract Forms FS–2400–6 and FS–2400–6T

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: The Forest Service is proposing to revise its timber sale contracts, Form FS–2400–6 for scaled sale procedures and Form FS–2400–6T

for tree measurement timber sale procedures. These proposed revisions will be the first substantive changes in the standard timber sale contract provisions in over 30 years. Contract provisions to implement laws and policies, formerly included as special provisions, are proposed to be consolidated into the standard provisions. A side-by-side comparison of the proposed revised contracts and the existing contracts is available as provided in the **ADDRESSES** section of this notice. Comments received will be considered when the Forest Service prepares the final timber sale contracts.

DATES: Comments must be received in writing on or before February 17, 2004.

ADDRESSES: Send written comments by mail to the Director of Forest and Rangeland Management, MAIL STOP 1105, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–1105; via e-mail to *timbercontracts@fs.fed.us;* or via facsimile to (202) 205–1045. These proposed timber sale contract forms are available for public review on the Forest Service World Wide Web/Internet site at *http://www.fs.fed.us/forestmanagement/infocenter/newcontracts/index.shtml.* Alternatively, the contracts can be reviewed in the office of the Director of Forest and Rangeland Management, Third Floor, Northwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. All comments received in response to this notice, including names and addresses when provided, will become a matter of public record and are available for public inspection and copying. The public may inspect comments received at the same address where copies of the contracts can be reviewed. Visitors are encouraged to call ahead to (202) 205–0893 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Forest and Rangeland Management Staff, (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Background

Timber sale contract Forms FS–2400–6 and FS–2400–6T are used by the Forest Service for the sale of all large, complex timber sales. Timber sale contract Form FS–2400–6 is used when timber is measured for payment after it is harvested, and timber sale contract Form FS–2400–6T is used when the basis for payment is measurement prior to sale. These contracts were originally brought into use in July 1970 and January 1972, respectively, and were the result of extended discussions between the Federal Timber Purchasers Committee and the Forest Service. After 2 years, these contracts were revised in September 1973 and October 1973, respectively, to incorporate modifications based upon experience gained and policy changes since their inception.

From 1973 until July 2001, the requirements of new legislation and Forest Service policy were implemented in the contracts by issuing special provisions that replaced or added to the standard contract provisions. In July 2001, new versions of timber sale contract Forms FS–2400–6 and FS–2400–6T were issued. The July 2001 versions incorporated the special provisions that had been brought into use since 1973, but did not make any other changes that affect the rights and obligations of the Forest Service and timber sale purchasers.

Proposed Contract Revisions

The Forest Service is proposing to revise timber sale contract Forms FS–2400–6 and FS–2400–6T to:

1. Clarify the remedies available when contracts are suspended, modified, or terminated for environmental reasons.

2. Incorporate special provisions that are applicable to all timber sales into the standard contract provisions.

3. Correct inconsistencies and clarify ambiguous language that has accumulated by the addition of 30 years of special provisions to the timber sale contracts.

4. Make organizational and editorial changes intended to eliminate duplicative and unnecessary provisions.

5. Decrease the need in the existing contracts to make certain standard provisions inapplicable by replacing those provisions with the appropriate former special provisions.

6. Provide for liquidated damages when the Forest Service unilaterally terminates or partially terminates a timber sale contract.

7. Provide for a rate redetermination after a specified time when the Forest Service orders the delay or interruption of operations for specific reasons.

A side-by-side comparison of the specific differences between the existing contracts and the proposed revised contracts is available electronically and in paper copy as provided in the **ADDRESSES** section of this notice. Comments received will be considered when the Forest Service prepares the final timber sale contracts. When the timber sale contracts are finalized, a subsequent notice will be published in the **Federal Register**.

Dated: December 10, 2003.

Tom L. Thompson,

Acting Chief.

[FR Doc. 03–31315 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 4284, subpart G.

DATES: Comments on this notice must be received by February 17, 2004 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Diane M. Berger, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250–3225, Telephone: (202) 720–2383.

SUPPLEMENTARY INFORMATION:

Title: Rural Business Opportunity Grants.

OMB Number: 0570–0024.

Expiration Date of Approval: June 30, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the Rural Business Opportunity Grant (RBOG) program is to promote sustainable economic development in rural areas. This purpose is achieved through grants made by the Rural Business-Cooperative Service (RBS) to public and private non-profit organizations and cooperatives to pay costs of economic development planning and technical assistance for rural businesses. The regulations contain various requirements for information from the grant applicants and recipients. The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to ensure that funds obtained from the Government are used appropriately. Objectives include gathering information to identify the applicant, describe the applicant's

experience and expertise, describe the project and how the applicant will operate it, and other material necessary for prudent Agency decisions and reasonable program monitoring.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5.97 hours per response.

Respondents: Non-profit corporations, public agencies, and cooperatives.

Estimated Number of Respondents: 210.

Estimated Number of Responses per Respondent: 13.8.

Estimated Number of Responses: 2895.

Estimated Total Annual Burden on Respondents: 17,290.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Business-Cooperative Service, including whether the information will have practical utility; (b) the accuracy of Rural Business-Cooperative Service's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 10, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 03–31341 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–XY–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: January 18, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products:

Product/NSN: 1 1/2' Round Ring Vinyl Clad Binder
7510–00–NIB–0130—White
7510–00–NIB–0145—Blue
7510–00–NIB–0146—Red
7510–00–NIB–0147—Gray
7510–00–NIB–0148—Cinnamon
7510–00–NIB–0149—Brown
7510–00–NIB–0150—Green
7510–00–NIB–0151—Jade
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Double Pocket Presentation Folder
7530–00–NIB–0698—Black
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Four Month Planner
7520–00–NIB–1689
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, Washington.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Ranger Load Carrying System (RLCS)
8470–00–NSH–0018—Chest Harness Adapter (Individual Component)
8415–00–NSH–1129—Ranger Load Carrying System
8415–00–NSH–1130—Individual RLCS Kit
8415–00–NSH–1131—Rifle Squad RLCS Kit
8415–00–NSH–1132—Weapons Squad RLCS Kit
8415–00–NSH–1133—Sniper RLCS Kit
8415–00–NSH–1134—Medic RLCS Kit
8415–00–NSH–1135—Regimental Recon Detachment RLCS Kit
8415–00–NSH–1136—Radio Pocket (Individual Component)
8415–00–NSH–1137—War Belt Suspender (Individual Component)
8415–00–NSH–1138—Horizontal Pouch Adapter (Individual Component)
8415–00–NSH–1139—Squad Casualty Bag (Individual Component)
8415–00–NSH–1140—RLCS Kit Bag

(Individual Component)
8415–00–NSH–1141—Sub Belt Holster Adapter (Individual Component)
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Services:

Service Type/Location: Grounds Maintenance Navy & Marine Corps Reserve Center 3144 Clement Avenue, Alameda, California.
NPA: Rubicon Programs, Inc., Richmond, California.
Contract Activity: Naval Facilities Engineering Command, Alameda, California.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–31382 Filed 12–18–03; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 18, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

On October 24, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 60908) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial Services, Marine Corps Air Station, Camp Lejeune, North Carolina.
NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina.
Contract Activity: Naval Facilities Engineering Command, Camp Lejeune, North Carolina.
Service Type/Location: Mail and Messenger Service, Tobyhanna Army Depot, Tobyhanna, Pennsylvania.
NPA: The Burnley Workshop of the Poconos, Inc., Stroudsburg, Pennsylvania.
Contract Activity: Tobyhanna Army Depot, Tobyhanna, Pennsylvania.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–31383 Filed 12–18–03; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–892, A-533–838]

Notice of Initiation of Antidumping Duty Investigations: Carbazole Violet Pigment 23 from India and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: David Layton at (202) 482–0371 or Chris Welty at (202) 482–0186, AD/CVD Enforcement Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATIONS:

The Petition

On November 21, 2003, the U.S. Department of Commerce (the Department) received a petition filed in proper form by Sun Chemical Corporation (Sun) and Nation Ford Chemical Company (collectively, the petitioners). The Department received supplemental information from the petitioners on December 4, 2003.

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of carbazole violet pigment 23 (CVP-23) from India and the People's Republic of China (PRC) are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from India and the PRC are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate. *See infra*, ''Determination of Industry Support for the Petition.''

Periods of Investigation

The anticipated period of investigation (POI) for India is October 1, 2002, through September 30, 2003, and for the PRC it is April 1, 2003, through September 30, 2003. *See* section 351.204(b)(1) of the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27385 (May 19, 1997)).

Scope of Investigations

The merchandise covered by these investigations is carbazole violet 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-*

dichloro-5, 15 5,15-diethy-5,15-dihydro-, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[1] The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the investigations.

The merchandise subject to these investigations is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition satisfies this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the petition covers a single class or kind of merchandise, CVP-23, as defined in the ''Scope of Investigations'' section, above. The petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Further, based on our analysis of the information presented to the Department by the petitioners, we have determined that there is a single domestic like product which is consistent with the definition of the ''Scope of the Investigation'' section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that the petitioners have established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petition from domestic producers of the like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met.

Accordingly, we determine that the petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Office 5 AD/CVD Enforcement, Initiation Checklist: Carbazole Violet Pigment 23 (CVP-23) from India and the People's Republic of China (December 11, 2003) (Initiation Checklist) at Attachment II, on file in the Central Records Unit, Room B-099 of the Department of Commerce.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and home market prices and factors of production are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

[1] Please note that the bracketed section of the product description, *[3,2-b:3',2'-m]*, is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* December 4, 2003, amendment to petition at 8.

[2] *See USEC, Inc.*, v. *United States*, 132 F. Supp. 2d 1,8 (CIT 2001), citing *Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642-44 (CIT 1988). *See also High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

India

Export Price

The petitioners based export price (EP) on average unit values of CVP-23 imports from India for the POI. The petitioners derived such values from import statistics under the HTSUS subheading 3204.17.9040.

Normal Value

With respect to normal value (NV), the petitioners provided a home market price for CVP-23 based on a price list obtained during the POI. The price was quoted in Indian rupees per kilogram on an ex-warehouse basis with the Central Excise and Sales Tax included. The petitioners adjusted this price by deducting the Central Excise and Sales Tax and converting the Indian value to U.S. dollars per pound using the exchange rates from the Department's website.

The estimated dumping margin for subject merchandise from India, based on a comparison of EP and NV based on a home market price quote, is 147.59 percent.

PRC

Export Price

The petitioner based EP on average unit values of CVP-23 imports from the PRC during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 3204.17.9040.

Normal Value

The petitioner alleges that the PRC is a NME country, and notes that in all previous investigations the Department has determined that the PRC is a NME. *See, e.g., Notice of Final Determination in the Less Than Fair Value Investigation of Barium Carbonate From the People's Republic of China*, 68 FR 46577, 46577–46578 (August 6, 2003). In accordance with section 771(18)(C) of the Act, any determination that a foreign country has at one time been considered a NME shall remain in effect until revoked. Therefore, the PRC will continue to be treated as a NME country unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as a NME remains in effect, the petitioner determined the dumping margin using a NME analysis.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) at a level of economic development comparable to the PRC in terms of per-capita gross national income; and (3) a commercial producer of the subject merchandise. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiation of this investigation.

With respect to NV, the petitioners calculated a NV based on the constructed values for crude and finished CVP-23, which were then weight-averaged based on the relative quantity of crude and finished color pigment imported during the POI. The petitioners provided constructed values based on Indian surrogate values and factors of production from the production processes of Indian and U.S. producers of CVP-23. Most of the Indian material inputs for the production of CVP-23 are taken from a schedule published by the Government of India and used to calculate import credits in a program called the Duty Entitlement Passbook Scheme. The import credits are based on the quantity of physical inputs used to produce crude CVP-23 and other products covered by the program. For those inputs not reported by the Indian government, the petitioners relied on their own experience in producing crude and finished CVP-23, and they adjusted for any known differences between their production process, the Indian production process, and the Chinese CVP-23 production process. Petitioners were unable to obtain publicly available prices for two material inputs, chloranil and para toluene sulphonyl chloride, in India or any other surrogate country and, therefore, submitted price quotes from Indian suppliers. We determined these prices were sufficient for initiation purposes.

Where applicable, the petitioners adjusted values to be exclusive of excise and sales taxes. Indian values were converted to U.S. dollars using the exchange rates from the Department's website. Where surrogate values were not contemporaneous with the POI, the petitioners adjusted such values using wholesale price indices for all commodities from India.

For selling, general and administrative expenses, profit and packaging, the petitioners relied upon amounts reported in the 2001–2002 financial reports of Pidilite Industries Ltd., which according to its website is the largest producer of CVP-23 in India.

The estimated dumping margin for the PRC, based on a comparison of EP and NV based on a weight-averaged constructed value, is 370.06 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of CVP-23 from India and the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the cumulated imports from India and the PRC of the subject merchandise sold at less than NV.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, domestic prices, revenue, profit-to-sales ratios, production employment, capacity utilization, and domestic market share. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information.

The Department has assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* the Initiation Checklist.

Initiation of Antidumping Investigations

Based upon our examination of the petition, we have found that it meets the requirements of section 732 of the Act. *See* the Initiation Checklist. Therefore, we are initiating antidumping duty investigations to determine whether imports of CVP-23 from India and the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the governments of India and the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine no later than January 5, 2004, whether there is a reasonable indication that imports of

CVP-23 from India and the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits. This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 11, 2003.

James Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00596 Filed 12–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade ADministration

[A-122–822]

Corrosion-Resistant Carbon Steel Flat Products From Canada: Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 30, 2003, the Department published the initiation of administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada, covering the period August 1, 2002, through July 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation and Deferral of Administrative Reviews* (68 FR 56262) (''*Initiation*''). This administrative review was initiated on the following exporters: Continuous Color Coat, Ltd. (''CCC''), Dofasco Inc. (''Dofasco''), Ideal Roofing Company, Ltd. (''Ideal Roofing''), Impact Steel Canada, Ltd. (''Impact Steel''), Russel Metals Export (''Russel Metals''), Sorevco and Company, Ltd. (''Sorevco''), and Stelco Inc. (''Stelco''). For the reasons discussed below, we are rescinding the administrative reviews of CCC, Impact Steel, and Ideal Roofing.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Dana Mermelstein at (202) 482–0780 and (202) 482–1391, respectively; Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2003, the Department published the initiation of administrative review of CCC, Dofasco, Ideal Roofing, Impact Steel, Russel Metals, Sorevco, and Stelco, covering the period August 1, 2002, through July 31, 2003. *See Initiation*. On October 10, 2003, the International Steel Group (''ISG'') withdrew its request for an administrative review of CCC. On October 29, 2003, Impact Steel withdrew its own request for an administrative review. Each request was the only request for review of these two companies. On October 10, 2003, Ideal Roofing withdrew its request for an administrative review. On November 18, 2003, United States Steel Corporation (''USSC'') also withdrew its request for an administrative review of Ideal Roofing. These were the only requests for review of Ideal Roofing.

Rescission, in Part, of the Administrative Review

Pursuant to the Department's regulations, the Department will rescind an administrative review ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' *See* 19 CFR 351.213(d)(1). Since both ISG and Impact Steel submitted timely withdrawals of their requests for review of CCC and Impact Steel, respectively, and since they were the only requesters, the Department is rescinding its antidumping administrative review of these companies, in accordance with 19 CFR 351.213(d)(1). Since Ideal Roofing and USSC timely withdrew their request for review, and they were the only requesters for Ideal Roofing, we are rescinding our review of Ideal Roofing. Based on these rescissions, the administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada covering the period August 1, 2002, through July 31, 2003, now covers the following companies: Dofasco, Russel Metals, Sorevco, and Stelco.

We are issuing and publishing this determination and notice in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4) of the regulations.

Dated: December 9, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00595 Filed 12–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–831]

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the preliminary results of new shipper reviews.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China until April 25, 2004. This extension applies to the new shipper reviews of the following seven exporters: Linyi Sanshan Import & Export Trading Co., Ltd., Sunny Import & Export Limited, Linshu Dading Private Agricultural Products Co., Ltd., Tancheng County Dexing Foods Co., Ltd., Jinxiang Dong Yun Freezing Storage Co., Ltd., Shanghai Ever Rich Trade Company, and Taian Ziyang Food Co., Ltd. The period of review is November 1, 2002, through April 30, 2003.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Ellman or Minoo Hatten, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4852 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2003, the Department of Commerce (the Department) announced the initiation of the new shipper reviews for seven companies. *See Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People's Republic of China*, 68 FR 40242.

The Tariff Act of 1930, as amended (the Act), at section 751(a)(2)(B)(iv) provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the date on which the new shipper review was initiated. The Act also provides that the Department may extend that 180-day period to 300 days if it concludes that the new shipper review is

extraordinarily complicated. *See also* 19 CFR 351.214(i).

The Department has determined that the new shipper reviews are extraordinarily complicated and that it is not practicable to complete the preliminary results by the current deadline of December 27, 2003. There are a number of complex factual and legal questions related to the calculation of the antidumping margins in the new shipper reviews, in particular the analysis of the *bona fides* of the sales at issue and the valuation of the factors of production. We require additional time to issue supplemental questionnaires addressing these matters, review the responses, and verify certain information. Therefore, in accordance with 19 CFR 351.214(i)(2), the Department is extending the time limit for the preliminary results by 120 days to April 25, 2004.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(i).

Dated: December 15, 2003.

Jeffrey May,

Deputy Assistant Secretary for AD/CVD Enforcement I.

[FR Doc. E3–00594 Filed 12–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rods from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on stainless steel wire rods (''SSWR'') from India in response to a request by Panchmahal Steel Limited (''Panchmahal''), Mukand Limited (''Mukand''), the Viraj Group (''Viraj''), and by petitioner,[1] who requested a review of Isibars Limited (''Isibars''), Mukand, and Viraj. The period of review (''POR'') is December 1, 2001, through November 30, 2002.

We have preliminarily determined that Mukand and Viraj have sold subject merchandise at less than normal value (''NV'') during the POR. In addition, we have determined to rescind the review with respect to Panchmahal based on the timely withdrawal of the only request for review of the company. Lastly, we have preliminarily determined to apply an adverse facts available rate to all sales and entries of Isibars' subject merchandise during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: January 20, 2004.

FOR FURTHER INFORMATION CONTACT: For Isibars contact Eugene Degnan at (202) 482–0414, for Mukand contact Jonathan Herzog at (202) 482–4271, for Panchmahal contact Jonathan Freed at (202) 482–3818, and for Viraj contact Kit Rudd at (202) 482–1385, or Robert Bolling at (202) 482–3434. AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1993, the Department published the final determination in the **Federal Register** that resulted in the antidumping duty order on certain stainless steel wire rods from India. *See Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From India,* 58 FR 54110 (October 20, 1993) (''*Antidumping Duty Order*''). On December 2, 2002, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 67 FR 71533 (December 2, 2002) (''*Opportunity to Request Administrative Review*'').

On December 31, 2002, Mukand, Panchmahal, and Viraj requested an administrative review of the antidumping duty order on certain stainless steel wire rods from India. *See* Letter to Assistant Secretary for Import Administration from Mukand, Panchmahal, and Viraj, dated December 31, 2002. Also, on December 31, 2002, petitioner requested an administrative review of the antidumping duty order on certain stainless steel wire rods from India for Isibars, Mukand, and Viraj. *See* Letter to the Honorable Donald L. Evan from petitioner, dated December 31, 2002. In accordance with 19 CFR 351.221(b), we published a notice of initiation of the review of Isibars, Mukand, Panchmahal, and Viraj on January 22, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 68 FR 3009 (January 22, 2003). On January 23, 2003, petitioner filed a request that the Department verify Isibars, Mukand, Panchmahal, and Viraj.

On February 11, 2003, the Department issued Sections A–E questionnaires to Isibars, Mukand, Panchmahal, and Viraj. Additionally, the Department initiated a sales below cost of production inquiry and requested that Mukand and Viraj respond to Section D of the questionnaire in addition to Sections A, B, and C.[2]

Panchmahal

On March 4, 2003, the Department received a letter from Panchmahal withdrawing its request for an administrative review. *See* Letter from Panchmahal, dated March 4, 2003.

Isibars

On March 11, 2003, Isibars submitted its Section A response to the Department and supplemented it with additional exhibits on April 11, 2003. On April 14, 2003, Isibars submitted its Sections B and C response. Additionally, on April 14, 2003, the Department issued its first supplemental Section A questionnaire to Isibars, to which Isibars responded on May 28, 2003. However, due to improper filing by Isibars, the Department initially rejected this submission.

On April 23, 2003, petitioner submitted an allegation that Isibars was selling subject merchandise below their

[1] Carpenter Technology Corporation.

[2] Because the Department disregarded certain Mukand and Viraj sales made in the home market that failed the cost test in the most recently completed segment of this proceeding and excluded such sales from NV, the Department determined that there are reasonable grounds to believe or suspect that Mukand and Viraj made sales in the home market at prices below the cost of producing the merchandise in this review. *See Stainless Steel Wire Rods from India: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review,* 68 FR 26288 (May 15, 2003) (''*Final Results*''); section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended, (''the Act'').

cost of production. *See* Petitioner's Cost Allegation, dated April 23, 2003. On April 25, 2003, the petitioner supplemented their cost of production allegation. *See* Stainless Steel Wire Rod from India: Isibars' Sales Deficiencies and Supplement to Isibars Allegation of Sales Below Cost (April 25, 2003). On June 3, 2003, the Department initiated a cost of production inquiry and requested that Isibars submit its Section D response.

On May 29, 2003, the Department issued a Sections B and C supplemental questionnaire to Isibars, to which Isibars responded on June 20, 2003. On July 8, 2003, the Department received Isibars' Section D response. Also on July 8, 2003, Isibars properly refiled its first Section A supplemental questionnaire of May 28, 2003.

On August 20, 2003, the Department issued a second Sections A, B, and C supplemental questionnaire and a first Section D supplemental questionnaire. The Department received Isibars' response to the second Sections A, B, and C supplemental questionnaire on September 29, 2003 and to the first Section D supplemental questionnaire on October 14, 2003. On September 12, 2003, the Department issued a third Section A supplemental questionnaire to Isibars, to which Isibars responded on October 14, 2003. On September 24, 2003, the Department issued a second Section D supplemental questionnaire to Isibars, to which Isibars responded on October 14, 2003.

On October 6, 2003, the Department issued a fourth Section A supplemental questionnaire, a third Sections B and C supplemental questionnaire, and a third Section D supplemental questionnaire to Isibars, to which Isibars responded on October 20, 2003. On October 21, 2003, the Department issued a fifth Section A supplemental questionnaire and a fourth Section D questionnaire, to which Isibars responded on November 5, 2003.

Mukand

On March 11, 2003, Mukand submitted its Section A response. On March 14, 2003, Mukand supplemented its Section A response with several exhibits. On April 7, 2003, Mukand submitted its Sections B and C questionnaire response.

On May 14, 2003, the Department requested pursuant to its *Final Results,* that Mukand submit its Section D response. *See Letter to Mukand from Mr. Robert Bolling,* dated May 14, 2003. On May 29, 2003, the Department issued its first Sections A, B, and C supplemental questionnaire to Mukand, to which Mukand responded on June 27, 2003. On June 11, 2003, Mukand submitted its Section D response. On July 11, 2003, Mukand supplemented its June 27, 2003, response with a Section C response concerning its constructed export price (''CEP'') sales.

On July 28, 2003, the Department issued a Section D supplemental questionnaire to Mukand, to which Mukand responded on August 29, 2003. On August 12, 2003, the Department issued a Sections A, B, and C supplemental questionnaire to Mukand. Mukand responded to the Department's Sections A, B, and C supplemental questionnaire on September 8, 2003. Also on August 12, 2003, the Department issued a Section C supplemental questionnaire to Mukand regarding its CEP sales, to which Mukand submitted a letter, dated September 15, 2003, informing the Department that it would not submit a response to this questionnaire. On September 23, 2003, the Department issued a Sections A, B, C, and D supplemental questionnaire to Mukand, to which Mukand responded on October 17, 2003. On October 29, 2003, the Department issued a second Sections A, B, C, and D supplemental questionnaire to which Mukand responded on November 17, 2003.

Viraj

Viraj submitted its Section A response on March 18, 2003 and its Sections B, C, and D responses on April 4, 2003. The Department issued its first Section A supplemental questionnaire to Viraj on April 9, 2003, to which Viraj responded on May 19, 2003. The Department issued its first Sections B, C, and D supplemental questionnaire to Viraj on June 20, 2003, to which Viraj responded on July 5, 2003. The Department issued a second Section A supplemental questionnaire to Viraj on September 3, 2003, to which Viraj responded on September 20, 2003. The Department issued a third Section A supplemental questionnaire to Viraj on September 11, 2003, to which Viraj responded on September 15, 2003. The Department issued a fourth supplemental questionnaire for Section A and a second Sections B, C and D supplemental questionnaire on October 7, 2003, to which Viraj responded on October 13, 2003. The Department issued a fifth Section A supplemental questionnaire to Viraj on October 13, 2003. Viraj responded to this questionnaire on October 20, 2003. The Department issued a third Sections C and D supplemental questionnaire to Viraj on October 20, 2003, to which Viraj responded on October 23, 2003. The Department issued a fourth Section D supplemental questionnaire to Viraj on October 27, 2003, to which Viraj responded on October 30, 2003. The Department issued a fifth Sections C and D supplemental questionnaire to Viraj on October 29, 2003, and received Viraj's response on October 30, 2003.

On August 5, 2003, the Department extended the due date for the preliminary results. *See Stainless Steel Wire Rods from India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 68 FR 46164, (August 5, 2003)(''*August 5th extension*''). In accordance with Section 751(a)(3)(A) of the Act, the Department extended the deadline date for the notice of preliminary results 90 days, from the original date of September 2, 2003, to December 1, 2003. *See August 5th extension*.

Additionally, on November 21, 2003, in accordance with Section 751(a)(3)(A) of the Act, the Department again extended the due date for the notice of preliminary results an additional 11 days from the revised due date of December 1, 2003, to December 12, 2003. *See Stainless Steel Wire Rods from India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 68 FR 65680 (November 21, 2003).

Period of Review

The period of review (''POR'') is December 1, 2001, through November 30, 2002.

Scope of the Review

The merchandise under review is certain SSWR, which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross Section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and purposes of the U.S. Bureau of Customs and Border Protection, the written

description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Verification

As provided in section 782(i)(3) of the Act, we verified sales and cost information provided by Viraj from November 3, 2003, through November 8, 2003, using standard verification procedures, including an examination of relevant sales, cost, financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report and are on file in the Department's Central Records Unit located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Partial Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party which requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department may extend this deadline if it is reasonable to do so. On December 31, 2003, Panchmahal requested that the Department review its sales for the POR. On March 4, 2003, which is within the 90 day period, Panchmahal withdrew its request for an administrative review. Thus, Panchmahal's request was timely and no other interested party requested a review of Panchmahal's sales to the United States during the POR. Therefore, in accordance with 19 CFR 351.213(d)(1), the Department is rescinding the review, in part, with respect to Panchmahal for the period of December 1, 2001, through November 3, 2002.

Facts Available

In the instant review, despite numerous requests and clarifications from the Department, Isibars failed to adequately provide the information requested by the Department. As explained in detail below, because the Department received deficient and incomplete responses to the questionnaire and multiple supplemental questionnaires from Isibars, the Department was unable to verify the incomplete information that Isibars did provide, which is necessary for the margin analysis.

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782 (c) and (e) of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to Section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner, and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Section 782(c)(2) of the Act similarly provides that the Department shall consider the ability of the party submitting the information and shall provide such interested party assistance that is practicable.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If the person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is ''deficient'' under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this review, Isibars repeatedly failed to supply the Department with information regarding home market and U.S. market sales reconciliations, major inputs from affiliates, control number (''CONNUM'') specific weight-averaged cost data, operable home market and U.S. market sales data, and they failed to serve petitioner in this review. These deficiencies effectively prevented the Department from conducting a meaningful verification. Despite the numerous requests by the Department in supplemental questionnaires, telephone calls, and e-mails, Isibars has failed to rectify the above mentioned factual deficiencies to the record, and to properly serve petitioner in this review. Additionally, the Department offered extra assistance and aid to Isibars in getting the required information on the record. *See* Memo to the File—e-mail correspondence with Isibars, dated October 8, 2003; Memo to the File—e-mail correspondence with Isibars, dated October 21, 2003; Memo to the File—e-mail correspondence with Isibars, dated October 24, 2003. Finally, although Isibars is appearing in this review *pro se*, the Department recognized that Isibars has extensive experience with Departmental procedures, having participated in numerous stainless steel bar reviews. *See Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review*, 68 FR 47543 (August 11, 2003); *Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000).

The Department delayed its departure for verification in order to allow Isibars time to provide the necessary information requested by the Department. *See* Memo to the File, e-mail correspondence with Isibars, dated November 5, 2003. Furthermore, the Department informed Isibars of the consequences of Isibars' continue failure to provide the materials requested by the Department. *See October 21st letter; October 29th letter*; all Department supplemental questionnaires. Nonetheless, the Department ultimately cancelled Isibars' verification because Isibars failed to provide the Department the requested information (*i.e.*, sales reconciliations, major inputs data from its affiliates, CONNUM specific weighted-average cost data, operable home market and U.S. market sales data), and failed to serve the petitioner in this review.

Accordingly, and as discussed in more detail below, the Department determined to apply facts available for

the requested information withheld by Isibars, in accordance with section 776(a)(2) of the Act. Further, as discussed below, the Department finds that in not providing the requested information, and not serving petitioners, Isibars failed to cooperate to the best of its ability in this review, and therefore determines that an adverse inference is warranted for all Isibars' sales.

A. Failure to Submit a Sales Reconciliation

The reconciliation is required of respondents to determine if all appropriate sales of the subject merchandise have been reported. A reconciliation serves as a ''starting point'' for the Department at verification. *See Certain Cut-to-Length Carbon Steel Plate from Mexico; Final Results of Antidumping Duty Administrative Review*, 64 FR 77, 78 (January 4, 1999). Among other things, the goal of verification is to confirm the accuracy and completeness of the data provided in a company's questionnaire responses and this data serves as a basis for the Department to ascertain if sales were accurately reported. *See* 19 C.F.R. 351.307(d).

Isibars' failure to provide or withholding of the requested reconciliation is an incomplete questionnaire response that significantly impeded this proceeding. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; Heavy Forged Hand Tools from the People's Republic of China* 65 FR 43290 (July 13, 2000) *and accompanying Issues and Decisions Memorandum* at Comment 1 (The Department used total facts available because the respondent failed to provide the essential reconciliation chart requested by the Department necessary to test the completeness of questionnaire response, and thus failed verification). Indeed, without the requested sales reconciliation information, the Department is unable to verify the information Isibars submitted. It is important to note that the Department has cancelled verification in several other cases because of incomplete questionnaire responses, and specifically because the respondents failed to provide requested reconciliations. *See Gourmet Equipment Corp.* v. *United States*, 24 C.I.T. 572 (CIT July 6, 2000), *regarding Chrome-Plated Lug Nuts from Taiwan*, 64 FR 17314 (1999)(The Court affirmed the Department's refusal to conduct verification because the respondent's submissions were not reconcilable to its financial statements, meaning the information submitted was unverifiable; as a result, the Department applied adverse facts available); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-rolled Carbon Steel Flat Products from Taiwan: Final Determination of Antidumping Duty Order*, 66 FR 49618, 49620–21 (Sept. 28, 2001)(The Department canceled both sales and cost verification because respondents failed to provide explanation and documentation for all its expenses and sales, and provided incomplete, deficient, and inconsistent affiliated-party sales information); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164, 73165–66 (Dec. 29, 1999)(''*CTL Plate from Indonesia*'') (the Department canceled verification and applied adverse facts available because the respondent did not adequately address the sales-related and cost-related questions).

Section 776(a)(2)(A) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent withholds information that has been requested by the Department. The Department has requested sales reconciliations from Isibars three times: in the original questionnaire, sent on February 11, 2003; in a supplemental questionnaire, issued on October 21, 2003; and in a letter to Isibars, sent on October 29, 2003. *See* Cancellation of Verification Memorandum, dated November 26, 2003 (''*Cancellation of Verification Memorandum*'') at 2–3. However, Isibars failed to supply a sales reconciliation throughout this review.

Section 782(d) requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency, and give the respondent an opportunity to remedy or explain the deficiency. In addition to the original questionnaire, and two supplemental questionnaires requesting a sales reconciliation, the Department, in an October 29, 2003, letter, alerted Isibars that failure to supply this information would lead to the cancellation of verification, and may result in the Department basing its determination on facts available. *See Cancellation of Verification Memorandum* at 2.

Because Isibars failed to supply the Department with the requested sales reconciliation that the Department needed to conduct a meaningful verification, and gave no explanation why it has failed to do so, despite numerous opportunities afforded by the Department, the Department cannot consider Isibars to have acted to the best of its ability in this review. Therefore, the application of adverse facts available in determining the preliminary margin, in accordance with section 776(b) of the Act, is warranted. *See Certain Hot-rolled Carbon Steel Flat Products from Taiwan: Final Determination of Antidumping Duty Order*, 66 FR 49618, 49620–21 (Sept. 28, 2001).

B. Major Inputs

Section 773(f)(2) of the Act allows the Department to test whether transactions between affiliated parties involving any element of value (*i.e.*, major or minor inputs) are at prices that ''fairly reflect the market under consideration.'' Section 773(f)(3) of the Act allows the Department to test whether, for transactions between affiliated parties involving a major input, the value of the major input is not less than the affiliated supplier's COP, where there is reasonable cause to believe or suspect the price is below COP. The Department considers the initiation of a sales-below-cost investigation reasonable grounds to believe or suspect that major inputs to the foreign like product may also have been sold at prices below the COP, within the meaning of section 773(f)(3) of the Act. *See Silicomanganese from Brazil; Final Results of Antidumping Administrative Review*, 62 FR 37869, 37871 (July 15, 1997). Therefore, because a sales-below-investigation has been initiated, the Department requires major input data from Isibars.

Section 776(a)(2)(A) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent withholds information that has been requested by the Department. Isibars has repeatedly failed to provide information regarding its affiliate's cost of production and market price for major inputs supplied by its affiliates. The Department has requested this information three times in questionnaires and supplemental questionnaires: the original Section D questionnaire, issued June 3, 2003; and two supplemental questionnaires, issued on September 24, 2003, and October 21, 2003. Because Isibars has withheld this information, the Department is authorized, subject to section 782(d) of the Act, to use facts otherwise available.

Section 776(a)(2)(D) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent provides information, but the information cannot be verified. Because Isibars provided only the transfer price of major inputs, and not the market price and the affiliate's cost of

production, the Department is unable to properly value major inputs, pursuant to section 773(f)(3), and therefore cannot meaningfully verify Isibars' COP.

Section 782(d) requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency, and give the respondent an opportunity to remedy or explain the deficiency. In addition to the two supplemental questionnaires that were issued requesting that Isibars supply major input information, the Department also notified Isibars of the importance of supplying this information to the Department in two letters sent to Isibars, on October 21, 2003, and on October 29, 2003. *See Cancellation of Verification Memorandum* at 3.

Because Isibars has not provided the requested information necessary to value major inputs despite numerous opportunities and requests by the Department, and because Isibars has offered no explanation why they have not supplied this information, we determine, pursuant to section 776(b) of the Act, that Isibars has not acted to the best of its ability to comply with the Department's requests for information. Therefore, the application of adverse facts available in determining the preliminary margin, in accordance with section 776(b) of the Act, is warranted. *See CTL Plate from Indonesia* at 73174–75.

C. Section D Cost Data not CONNUM Specific

Despite the repeated requests by the Department to correct its data, Isibars' reported labor and variable overhead costs remain virtually the same for each CONNUM in its reported cost of production (''COP'') data, and literally the same for each CONNUM in its reported constructed value (''CV'') data. Without accurate data for these items, the Department cannot perform an accurate cost test, cannot make appropriate selections for price-to-price comparisons, and cannot determine accurate constructed values for use as normal value. Therefore, Isibars' Section D response is unusable for this preliminary determination. *See Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey,* 65 FR 1127, 1131 (January 7, 2000).

Section 776(a)(2)(A) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent withholds information that has been requested by the Department. The Department has requested that Isibars report its Section D COP and CV data as CONNUM specific weighted-average data six times: in the original Section D questionnaire, in three supplemental questionnaires, issued on August 20, 2003; on October 6, 2003; and on October 21, 2003; and in a letter and an e-mail sent to Isibars on October 29, 2003. Isibars has never complied with these numerous requests.

Section 776(a)(2)(B) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent fails to provide requested information in the form or manner requested by the Department, subject to sections (c)(1) and (e) of section 782. Although Isibars supplied some cost data, as explained immediately below, it repeatedly failed to conform its cost data to the form requested by the Department. Isibars never, pursuant to section 782(c)(1), notified the Department that it could not submit this data in the form requested. Furthermore, the data, as provided by Isibars, is unusable by the Department in determining Isibars' COP. *See* section 782(e).

Section 776(a)(2)(D) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent provides information, but the information cannot be verified. Because Isibars' Section D cost data is not provided as CONNUM specific weighted-averaged data, the Department cannot verify the COP for each unique product of subject merchandise.

Section 782(d) requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency, and give the respondent an opportunity to remedy or explain the deficiency. In the original Section D questionnaire, the Department provided a general explanation to Isibars of how to report its COP data. This general explanation instructed Isibars that the COP is the weighted-average CONNUM specific cost of the product sold. *See* original questionnaire, at D–1. A footnote on page D–1 further explains that there should be a ''single weighted-average cost for each CONNUM.'' *See* original questionnaire, at D–1. Furthermore, the Section D questionnaire specifically instructed Isibars to report each COP variable as CONNUM specific per-unit costs. *See* original questionnaire, at D–15—D–17. Despite these instructions, Isibars failed to report CONNUM specific per-unit costs in its Section D database.

In the first Section D supplemental questionnaire, issued on August 20, 2003, the Department explained to Isibars that it must account for time in its allocations for labor and variable production overhead, and requested Isibars submit worksheets showing how it calculated these costs. Isibars never responded to these requests. In the October 21, 2003, supplemental questionnaire, the Department requested this again, and Isibars did respond, in its November 5, 2003, response, but did not account for time in its allocation. The Department also stressed to Isibars in the Department's October 6, 2003, supplemental questionnaire that Isibars must report weighted average costs specific to each unique CONNUM. However, to date Isibars has never adjusted its reported CONNUM data to reflect CONNUM specific, weighted-average data. Finally, in light of the fact that Isibars appears in this review *pro se,* the Department once again, in a letter sent on October 29, 2003, stressed to Isibars that its cost data must be reported as CONNUM specific weighted averages, and emphasized that failure to do so would result in cancellation of the verification of Isibars.

Because Isibars failed to supply the Department with the requested data that the Department needed to conduct a meaningful verification, and gave no explanation why it has failed to do so, despite numerous opportunities afforded by the Department, the Department cannot consider Isibars to have acted to the best of its ability in this review. Therefore, the application of adverse facts available in determining the preliminary margin, in accordance with section 776(b) of the Act, is warranted. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164, 73174–75 (December 29, 1999).

D. Computer Data Files Submitted November 5, 2003, for Sections B & C Were Inoperable

The final computer data file received by the Department from Isibars on November 5, 2003, contained data files for Sections B & C that were inoperable and could not be accessed.

Section 776(a)(2)(A) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent withholds information that has been requested by the Department. Isibars failed to provide final data sets of home market and U.S. sales, immediately before the planned verification.

Section 782(d) requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency, and give

the respondent an opportunity to remedy or explain the deficiency. Isibars was cautioned in an October 21, 2003, letter, attached to the Department's October 21, 2003, fifth Section A, fourth Section D supplemental questionnaire, that the Department required working computer data files from Isibars in order to proceed to verification. *See* October 29, 2003, letter from the Department. Isibars was again cautioned by the Department, in an October 29, 2003, letter from the Department, that failure by Isibars to submit complete and accurate data would result in the cancellation of verification. *See October 29, 2003, letter*.

Because Isibars failed to supply the Department with the necessary sales data that the Department needed to conduct a meaningful verification, and gave no explanation why it has failed to do so, despite numerous opportunities afforded by the Department, the Department cannot consider Isibars to have acted to the best of its ability in this review. Therefore, the application of adverse facts available in determining the preliminary margin, in accordance with section 776(b) of the Act, is warranted. *See Preliminary Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from Mexico*, 65 FR 63562, 63564 (October 24, 2000) (stating that the use of adverse facts available was appropriate because respondent did not provide home market sales data in a timely manner).

E. Failure To Serve Petitioner in This Review

Isibars' non-service of petitioners, in conjunction with numerous late filings, improper filings, and incomplete responses by Isibars, has possibly impaired petitioners ability to participate in this review. *See* Petitioner's letter Stainless Steel Wire Rod from India—Isibars' Supplemental Sales Deficiencies and Cost Deficiencies, dated October 20, 2003.

Section 776(a)(2)(B) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent fails to provide information by the deadline for submission, or in the form or manner requested. Isibars has failed to serve the petitioner in this review numerous times, as requested by section 351.303(f)(1) of the Department's regulations, which directs all persons filing a document with the Department to simultaneously serve a copy of that document to all persons on the service list. To date, petitioner has not received: Isibars' September 29, 2003, Sections B & C supplemental questionnaire response; Isibars' October 14, 2003, Section A supplemental questionnaire response; Isibars' October 14, 2003, first Section D supplemental questionnaire response; Isibars' October 14, 2003, Section D second supplemental questionnaire response; nor Isibars' October 20, 2003, Sections A, B and D supplemental questionnaire response.

Section 782(d) requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency, and give the respondent an opportunity to remedy or explain the deficiency. Despite numerous admonitions by the Department (*i.e.*, an October 15, 2003, telephone call; an October 15, 2003, e-mail; and an October 29, 2003, letter), Isibars, to date, has never served to petitioner the above mentioned responses.

Because Isibars failed to serve petitioner, and gave no explanation why it has failed to do so, despite admonitions by the Department, the Department cannot consider Isibars to have acted to the best of its ability in this review. Therefore, the application of adverse facts available in determining the preliminary margin, in accordance with section 776(b) of the Act, is warranted.

Isibars' failure to provide the information requested by the Department has resulted in an inadequate response that has prevented the Department from conducting verification and using its data in the preliminary results. *See* Cancellation of Verification Memorandum to the File from Eugene Degnan to Edward Yang, dated November 26, 2003 (''*Cancellation of Verification Memorandum*''). Furthermore, Isibars' failure to provide the requested data and to serve petitioners has significantly impeded this review, as defined by section 776(a)(2)(C) of the Act. Thus, pursuant to sections 776(a)(2)(A), (B), (C) and (D) of the Act, and having satisfied sections 782(c)(2), (d), and (e) of the Act, the Department has determined to apply facts otherwise available in this proceeding with respect to Isibars.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Doc. No. 103–316, Citation No. (1994), at 870. Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties, Countervailing Duties; Final Rule*, 62 FR 27340 (May 17, 1997).

In this case, Isibars has failed to cooperate by not acting to the best of its ability to comply with the requests for information. As discussed above, despite the numerous requests by the Department, Isibars failed to provide or withheld requested information from the Department (*i.e.*, a sales reconciliation, information concerning the valuation of major inputs, weighted-average CONNUM specific cost data, service of the petitioner, and a working Sections B and C database). Additionally, Isibars was provided numerous offers of assistance by the Department and opportunities and supplemental questionnaires to fully respond to the Department's requests, in accordance with section 782(d) of the Act. *See Cancellation of Verification Memorandum.* However, despite the assistance offered and provided by the Department's staff, Isibars failed to rectify its many record deficiencies. *See Cancellation of Verification Memorandum.*

Due to Isibars' failure to provide the requested information that the Department identified as necessary for the verification, the Department was precluded from conducting verification by the inadequacy of information on the record. Moreover, Isibars failed to provide a reasonable explanation for its failure to comply with these standard requests for information. Accordingly, the Department finds that Isibars did not act to the best of its ability to provide the information requested, despite the assistance offered by the Department. As facts become available, we have preliminarily assigned Isibars the all others rate of 48.80 percent. As discussed below, we have corroborated this rate pursuant to 19 CFR 351.308(d) of the Department's regulations.

Corroboration of Secondary Information Used as Adverse Facts Available

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on ''secondary information,'' the Department shall to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *SAA*,

clarifies that the petition is secondary information, and states that corroborate means to determine that the information used has probative value. *See SAA* at 870; *See also* 19 CFR 351.308(d). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. We have previously examined the reliability of the 48.80 rate and found it to be reliable, and placed it on the record of this review. *See* Corroboration Memorandum for Panchmahal Steel Limited for the final results of the 2000–2001 Administrative Review of Stainless Steel Wire Rods from India, dated May 8. We have no information in this administrative review which would indicate a change in the reliability of this rate.

With respect to the relevance aspect of the corroboration, the Department has considered information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstance indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as best information available (predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997)(the Department will not use a margin that has been judicially invalidated). None of these circumstances are present here. Moreover, the rate selected is the rate currently applicable to an exporter, and there is no information on the record of this review that demonstrates that this rate is not relevant for use as AFA during this administrative review.

Accordingly, we determine that the highest rate from any previous segment of this administrative proceeding (*i.e.*, the rate of 48.80 percent from the petition) is in accord with section 776(c)'s requirement that secondary information be corroborated (*i.e.*, that it have probative value).

Affiliation/Collapsing

In the previous administrative review, the Department collapsed Viraj Forgings Limited (''VFL''), Viraj Alloys Limited (''VAL'') and Viraj Impoexpo Limited (''VIL'') because the companies were found capable, through their sales and production operations, of manipulating prices or affecting production decisions. *See Final Results*. In the current review, Viraj reported that there were operational and legal changes to Viraj affiliated companies during this POR. *See* Antidumping Duty Administrative Review of Stainless Steel Wire Rods from India: Collapsing of Viraj Alloys, Ltd. And VSL Wires, Ltd., dated December 12, 2003 (''*Viraj Collapsing Memorandum*''). In the current review, VAL and VSL Wires, Limited (''VSL'') reported they produced subject merchandise during the POR. As discussed below, the Department has preliminarily determined that VAL and VSL are affiliated companies, and that VAL and VSL should be collapsed and considered one entity pursuant to section 771(33) of the Act and 19 CFR 351.401(f). *See Viraj Collapsing Memorandum*.

Section 771 (33) of the Act, states that the Department considers the following parties as affiliated:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer or director of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and

(G) Any person who controls any other person and such other person.

For the purpose of this statute, a person is deemed to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. *See* section 771(33) of the Act. Furthermore, 19 CFR 351.401(f) states that the Department will treat two or more affiliated producers as a single entity where: (1) Those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (2) where there is a significant potential for the manipulation of price or production. In identifying whether a significant potential for the manipulation of price or production exists, 19 CFR 351.401(f)(2) states that the Department may consider: (i) The level of common ownership; (ii) the extent which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

The Department has analyzed the information regarding affiliation on the record in this administrative review, and preliminarily determines that VAL and VSL should be considered affiliated under sections 771(33)(A) and (F) by virtue of common control by several family members involved in ownership and management of VAL and VSL. *See Viraj Collapsing Memorandum* at 3. First, the record evidence shows that a husband and wife serve as the chairperson of VAL and VSL, respectively, while two brothers serve as directors of VAL and VSL, respectively. *See Viraj Collapsing Memorandum* at 3.

Moreover, the aforementioned chairperson and directors of VAL and VSL control significant shares of stocks in both companies, and the chairperson of VAL is also the managing director of VAL. *See Viraj Collapsing Memorandum* at 3. Thus, due to their significant shareholdings and positions within the companies, the chairpersons and directors are in a position to exercise legal and operational control over both VAL and VSL. *See Viraj Collapsing Memorandum* at 3. Therefore, the Department preliminarily determines that VAL and VSL are affiliated in accordance with sections 771(33)(A) and (F) of the Act by virtue of the fact that immediate members of the family are also the chairperson and directors of VAL and VSL and directly and indirectly control both of these entities.

Further, the Department preliminarily determines that VAL and VSL should be collapsed in accordance with 19 CFR 351.401(f), because both VAL and VSL have production facilities to produce similar or identical merchandise without substantial retooling and there is a significant potential for the manipulation of price or production.

During the POR, for sales to the home market, VAL produced and retained title to stainless steel billets which are rolled by an unaffiliated subcontractor into stainless steel wire rod, via tolling arrangement. The subcontractor returns the non-annealed and non-pickled finished wire rod (''unfinished wire rod'') to VAL, who transfers it to VSL, who sells the subject merchandise in the home market. For sales to the U.S. market, VAL produced and retained title

to stainless steel billets which are rolled by the same unaffiliated sub-contractor via a tolling arrangement, into unfinished stainless steel wire rod. The subcontractor returns the unfinished wire rod to VAL, who transfers the title to VSL. VSL then pickles and anneals the unfinished wire rod, packages for export and ships the subject merchandise to the United States. *See Viraj Collapsing Memorandum* at 5. All sales of stainless steel wire rods in the Indian market and U.S. market are made by VSL. *See Viraj Collapsing Memorandum* at 5; Verification Report at 6.

According to 19 CFR 351.401(h), the Department does not consider a subcontractor or toller as the producer of subject merchandise where that subcontractor or toller does not acquire ownership or sell the relevant merchandise. Thus, via its tolling arrangement with the unaffiliated subcontractor, VAL is considered a producer of SSWR, because the unaffiliated subcontractor does not acquire ownership of VAL's stainless steel billets/SSWR, nor does it control the sale of the SSWR, once it has been rolled. *See* 19 C.F.R. 351.401(h); *Polyvinyl Alcohol from Taiwan: Final Results of Antidumping Administrative Review,* 63 FR 32810, 32816 (June 16, 1998).

Further, the Department also considers VSL a producer of SSWR. By virtue of the fact that VSL obtains title to VAL's unfinished SSWR and then finishes the production (*i.e.*, anneals and pickles) of VAL's unfinished SSWR, VSL is a producer of SSWR. Thus, in accordance with 19 CFR 351.401(f)(1), VAL and VSL have production facilities for production of similar or identical products (*i.e.*, unfinished SSWR and annealed and pickled SSWR), and substantial retooling of either facility to restructure manufacturing priorities would not be required. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea,* 63 FR 40404, 40410 (July 29, 1998)(The Department collapsed POSCO/Changwon, producers of subject merchandise with Dongbang, another producer of subject merchandise, despite the fact that the Dongbang only had the ability to anneal and pickle the subject merchandise).

Additionally, the Department also finds that in accordance with 19 CFR 351.401(f)(1), VAL has the capability to add finishing equipment (*i.e.*, annealing and pickling equipment) to its production facilities without requiring substantial retooling. Specifically, the Department examined VAL and VSL's 2001–2002 financial statements and determined that VSL's plant and machinery gross fixed assets account for only a small percentage of VAL's plant and machinery gross fixed assets. *See Viraj Collapsing Memorandum* at 6; *May 19, 2003 SQR* at SQR–A–062 and SQR–A–025. Further, the Department also examined the total gross fixed assets of VAL and VSL and found that VSL's total gross fixed assets account for only a small percentage of VAL's total gross fixed assets. *See Viraj Collapsing Memorandum* at 6; *May 19, 2003 SQR* at SQR–A–062 and SQR–A–025. Thus, VAL could add VSL's annealing and pickling operations to its production process for SSWR for a small portion of its total plant and machinery value or its overall corporate value, either through an outright purchase of VSL or by purchasing annealing and pickling equipment of its own. Therefore, the Department believes that VAL and VSL would not need to engage in major retooling to shift production of SSWR from one company to the other.

Finally, the Department preliminarily determines that VAL and VSL have enough common ownership and have intertwined their operations significantly enough to justify the conclusion that a significant potential for manipulation of price and production exists. Thus, the Department preliminarily determines that VAL and VSL should be collapsed. Specifically, (1) VAL and VSL share common shareholders, including the chairpersons and directors of VAL and VSL; (2) VAL acts as the sole supplier to VSL of unfinished wire rods; and (3) VSL makes all sales of SSWR in the home market and U.S. market. *See Viraj Collapsing Memorandum* at 7. Thus, both VAL and VSL are capable, through their sales and production operations, of manipulating prices or affecting production decisions. Therefore, in accordance with 19 CFR 351.401(f), the Department preliminarily determines to collapse VAL and VSL as Viraj for the purposes of this review.

Normal Value Comparisons

To determine whether sales of subject merchandise from India to the United States by Mukand and Viraj were made at less than NV, we compared the export price (''EP'') and CEP, as appropriate, to the NV, as described in the ''Export Price/Constructed Export Price'' and ''NV'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the *Scope of the Review* section above, which were produced and sold by Mukand and Viraj in the home market during the POR, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Mukand

Mukand submitted information on the record which claimed that all of its reported grades should be treated as distinct grades for calculation purposes. *See* Mukand's Sections B and C response dated April 7, 2003, at 7 & 41. For the purpose of accurately comparing subject merchandise, the Department requested that Mukand provide a chemical breakdown of each of its grades. After analyzing the data presented by Mukand, the Department has determined that there is insufficient record evidence to support Mukand's position that grade 304LN is a distinct grade from 304L. Therefore, the Department has preliminarily determined to combine the above grades; specifically, the Department has determined that grade 304LN should be treated as grade 304L.

The grade chemistries provided on the record by Mukand indicate that the chemistry ranges reported by Mukand for grades 304L and 304LN are of a similar chemistry and composition; thus, Mukand's grades 304LN and 304L have been treated by the Department as one grade for purposes of the home market and U.S. sales programs.

It is the Department's practice not to create additional categories unless the physical characteristics are significantly different from an existing known category. *See Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review,* 63 FR 781 (January 7, 1998). Therefore, for the purposes of these preliminary results, the Department has determined to treat Mukand's grade 304LN as grade 304L.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of

importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

For purposes of this review, Mukand has classified certain sales as EP sales and certain sales as CEP sales. Based on the information on the record, we are using both EP and CEP as defined in section 772(a) and (b) of the Act.

For purposes of this review, Viraj has classified all sales as CEP sales. Based on the information on the record, we are using CEP as defined in section 772(b) of the Act.

Mukand

The Department has determined that Mukand's EP sales are properly reported sales, because those sales were made in accordance with the definition of an EP sale. Mukand has classified those sales made by its wholly-owned affiliate, Mukand International Limited (''MIL''), which was based in the United Arab Emirates during the POR, as EP sales. For the reported EP sales, MIL sold directly to a U.S. customer, prior to importation. Based on the evidence on the record, the Department preliminarily determines that MIL's EP sales were made within the meaning of section 772(a) of the Act, and thus have been appropriately classified by Mukand as EP transactions.

The Department based EP on packed prices to unaffiliated purchasers in the United States. The Department made deductions for inland freight, international freight, marine insurance, brokerage and handling, and U.S. Customs duties in accordance with section 772(c)(2) of the Act.

In addition, Mukand classified certain sales made in the United States after importation, in accordance with an agreement signed by MIL and its customer Precision Metals Services (''PMS'') (''the Agreement''), as CEP sales. Due to the proprietary nature of this agreement, please refer to Antidumping Duty Administrative Review of Stainless Steel Wire Rods from India: Agency Sales Analysis, dated December 12, 2003 (*''Agency Sales Memorandum''*), for a detailed explanation. According to Mukand, the agreement was signed, prior to the POR, after several shipments of subject merchandise were rejected by PMS after the subject merchandise had been imported into the United States and stored at PMS' warehouse in the United States. During the POR, several downstream sales of the subject merchandise were made to unaffiliated U.S. customers by PMS in accordance with the terms of the Agreement. Based on the evidence on the record, the Department preliminarily determines that MIL's CEP sales were made within the meaning of section 772(b) of the Act, and thus have been appropriately classified by Mukand as CEP transactions.

Additionally, based on the evidence on the record, the Department has preliminarily determined that given the unique terms and circumstances of these sales, those sales classified by Mukand as CEP sales should also be treated as sales made through an agent, with PMS as the agent. *See Agency Sales Memorandum.*

Citing the *Final Results,* the Department issued a supplemental questionnaire on May 29, 2003, requesting that Mukand report the sales prices and expenses incurred on the reported agency sales to which Mukand provided the Department with a Section C questionnaire response on July 11, 2003. However, after a thorough examination of this response and the accompanying sales database, the Department identified several deficiencies in the response and sales database, requiring the Department to issue an 18 page supplemental questionnaire on August 12, 2003. Despite providing Mukand a chance to correct the deficiencies in the response, Mukand informed the Department that PMS would not submit a response to the Department's supplemental questionnaire. *See* Letter from Mukand, dated September 15, 2003; *Agency Sales Memorandum.*

By not providing the agency sales information requested by the Department, in a database format that provides specific prices and expenses for these agency sales, Mukand has prevented the Department from calculating an accurate dumping margin. Further, in the *Final Results,* the Department made it clear to Mukand that the Department would further examine these sales in subsequent reviews. *See Final Results* at Comment 2. Moreover, the Department applied facts available to Mukand's CEP/agency sales in the last review, noting that it had requested the downstream sales data from Mukand late in the review process. *See Final Results* at Comment 2. Thus, Mukand had notice that the Department would further examine any reported CEP/agency sales in this review and the possible consequences of not supplying the Department with the requested information.

However, despite this knowledge, Mukand and PMS failed to respond to the Department's request to remedy the deficiencies in their response to the Department's request for the downstream sales prices and expenses for the CEP/agency sales. Thus, because Mukand was aware of the fact that the Department would examine its reported CEP/agency sales and the potential consequences of not responding to the Department's request, and because, unlike in the last review, the Department made this request several months before the preliminary determination, the Department has preliminarily determined to apply facts available to these sales (*i.e.*, Mukand's CEP/agency sales), because Mukand and PMS have withheld certain information requested by the Department and did not act to the best of its ability to comply with the Department's request. *See* sections 776(a)(2)(A) and 776(b) of the Act.

Consistent with sections 776(a)(2)(A) and 776(b) of the Act, Mukand and PMS withheld information that had been requested by the Department and did not act to the best of its ability to comply with the Department's request for information, justifying the use of adverse facts available in reaching the applicable determination. Therefore, the Department has preliminarily determined that the use of adverse facts available for the prices and expenses incurred for Mukand's agency sales in the U.S. market, in accordance with section 776(b) of the Act. Facts available, the Department has applied the corroborated ''all others'' rate of 48.8% to Mukand's reported CEP sales.

Viraj

For purposes of this review, Viraj has classified all of its sales as CEP sales. Based on the information on the record, we are using CEP as defined in section 772(b) of the Act.

Viraj has classified those sales made by VSL through Viraj USA Inc. (''VUI''), an affiliated reseller in the United States that is 100% owned by VFL, as CEP sales. VSL makes the shipment from India on an Ex-Dock Duty Paid (''EDDP'') basis to VUI. VUI clears the goods through U.S. customs and oversees customer delivery. Then VUI sells the goods to the unaffiliated U.S. customer, who makes payment to VUI.

Based on the record evidence, the Department preliminarily determines that VSL's U.S. sales through VUI were made ''in the United States'' within the meaning of section 772(b) of the Act, and thus have been appropriately classified by Viraj as CEP transactions.

The Department calculated CEP, in accordance with section 772(b) of the Act, based on the packed EDDP prices to the first unaffiliated customer in the United States. The Department made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, brokerage and handling, inland freight, international freight, U.S. customs duties, marine insurance, and customs clearance and delivery arrangements. In accordance with section 772(d)(1) of the Act, we deducted those selling expense associated with economic activities occurring in the United States, including direct selling expenses (bank charges and credit expenses) and indirect selling expenses.

We recalculated Viraj's U.S. credit expenses to reflect U.S. Federal Reserve short-term rates in accordance with the Department's policy, because Viraj did not incur any short-term loans denominated in U.S. dollars, and the rate reported by Viraj was based on a rate quote that could not be substantiated. *See* Policy Bulletin 1998.2, *Imputed Credit Expenses and Interest Rates,* (February 23, 1998); Sales and Cost Verification of Viraj Alloys Limited (''VAL'') and VSL Wires, Limited (''VSL'') in the Antidumping Administrative Review of Stainless Steel Wire Rods from India, dated December 10, 2003 (''*Verification Report*'') at 14; Analysis Memorandum for Viraj Alloys Limited and VSL Wires Limited for the Preliminary Results of the Administrative Review Stainless Steel Wire Rods from India for the Period December 1, 2001 through November 30, 2002 (''*Analysis Memorandum*'') at 3. Additionally, the Department has denied Viraj's reported brokerage and handling expenses, because Viraj could not provide documentation substantiating its reported brokerage and handling expenses. *See Verification Report* at 13; *Analysis Memorandum* at 2; *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany,* 67 FR 35497 (May 20, 2002). Finally, as explained in the ''Duty Drawback'' section below, we are not making any adjustment for duty drawback.

We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Duty Drawback

Viraj

In the previous two administrative reviews, the Department denied Viraj's request for an upward adjustment to the U.S. starting price based on duty drawback pursuant to section 772(c)(1)(B) of the Act. *See Stainless Steel Wire Rods from India: Final Results of Antidumping Duty Administrative Review,* 67 FR 37391 (May 29, 2002); *Final Results* at 26290. The Department denied the duty drawback adjustment because the reported duty drawback was not directly linked to the amount of duty paid on imports used in the production of merchandise for export as required by the Department's two-part test, which states there must be: (1) A sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product. *See Rajinder Pipes Ltd.* v. *United States,* 70 F. Supp. 2d 1350, 1358 (CIT Sept. 17, 1999). The Court of International Trade has upheld the Department's past decisions to deny respondent an adjustment for duty drawback because there was not substantial evidence on the record to establish that part one of the Department's test had been met. *See Viraj Group, Ltd.* v. *United States,* 162 F.Supp. 2d 656 (CIT August 15, 2001).

Similarly, in the current review, the Department finds that Viraj has not provided substantial evidence on the record to establish the necessary link between the import duty and the reported rebate for duty drawback. Viraj has reported that it received duty drawback in the form of duty entitlement certificates which are issued by the Government of India to neutralize the incidence of basic custom duty on the import of raw materials used in the production of subject merchandise, but has failed to establish the necessary link between the import duty paid and the rebate given by the Government of India. *See* Viraj's April 4, 2003 response at C–19. As in the previous review, Viraj was not able to demonstrate that the import duty paid and the duty drawback rebate were directly linked. Therefore, the Department is denying a duty drawback credit for the preliminary results of this review.

Normal Value

After testing home market viability, we calculated NV as noted in the ''Price-to-CV Comparisons'' and ''Price-to-Price Comparisons'' sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared the volume of home market sales of the foreign like product by Mukand and Viraj to the volume of each of their U.S. sales of subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because the aggregate volume of home market sales of the foreign like product by Mukand and Viraj were each greater than five percent of the aggregate volume of U.S. sales for the subject merchandise, we determined that sales in the home market provide a viable basis for calculating NV. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and in the ordinary course of trade.

For NV, we used the prices at which the foreign like product was first sold for consumption in India, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (''LOT'') as the EP or CEP as appropriate. After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-Constructed Value (''CV'') Price Comparisons'' sections of this notice.

Additionally, Viraj reported the home market sales of VSL. Since we have preliminarily determined to collapse the companies of Viraj, we included the home market sales of VSL as the basis of NV for Viraj.

2. Cost of Production Analysis

Mukand

Because the Department disregarded certain Mukand sales made in the home market at prices below the cost of producing the subject merchandise in the most recently completed segment of this proceeding and excluded such sales

from NV, the Department determined that there are reasonable grounds to believe or suspect that Mukand made sales in the home market at prices below the cost of producing the merchandise in this review. *See Final Results,* 68 FR 26290; Department's letter to Mukand, dated May 14, 2003; section 773(b)(2)(A)(ii) of the Act. As a result, the Department requested that Mukand report its cost of production on May 14, 2003, to determine whether Mukand made home market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act. *See* Department's letter to Mukand, dated May 14, 2003.

Viraj

Because the Department disregarded certain Viraj Group sales made in the home market at prices below the cost of producing the subject merchandise in the most recently completed segment of this proceeding and excluded such sales from NV, the Department determined that there are reasonable grounds to believe or suspect that Viraj made sales in the home market at prices below the cost of producing the merchandise in this review. *See Final Results;* section 773(b)(2)(A)(ii) of the Act. As a result, Viraj submitted its Section D questionnaire response to the Department on April 4, 2003.

3. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated cost of production (''COP'') based on the sum of Mukand and Viraj's costs of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (''SG&A''), including interest expenses, and packing costs. The Department relied on the COP data submitted by Mukand and Viraj in their original and supplemental cost questionnaire responses for this calculation.

Viraj

For the preliminary results, the Department denied Viraj's claimed interest offset because we have determined that Viraj's claimed interest offsets that were not of a short-term nature. *See Verification Report* at 22. Thus, the Department has recalculated Viraj's interest expense. *See Analysis Memorandum* at 4.

4. Test of Home Market Prices

We compared the weighted-average COP for Mukand and Viraj's home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all cost with all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and indirect selling expenses.

5. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the sales made by Mukand and Viraj of a given product were, within an extended period of time, at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the sales made by Mukand and Viraj of a given product were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time, in accordance with sections 773(b)(2)(B) of the Act and 19 C.F.R. 351.406(b). In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the cost of production, we disregarded all sales of that product.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the sum of the cost of materials, fabrication employed by Mukand and Viraj in producing the subject merchandise, and SG&A, including interest expenses and profit. We calculated the COPs included in the calculation of CV as noted above in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in India. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. For CV, we made the same adjustments described in the COP section above.

Price-to-Price Comparisons

Mukand

For those products comparisons for which there were sales at prices at or above the COP, we based NV on the home market prices to the home market customers. We made adjustments, where applicable, for inland freight from plant to distribution warehouse, and warehousing in accordance with section 773(a)(6)(B)(i) and (ii) of the Act. We made circumstance-of-sale adjustments for commissions, credit and interest revenue, where appropriate, in accordance with section 773(a)(6)(C) of the Act. We also made commission-offset adjustments, where applicable, for indirect selling expenses, including inventory carrying costs in accordance with section 773(a)(6)(C) of the Act.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A), we added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (''COM'') of the U.S. product, we based NV on CV. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on CV.

Viraj

For those products comparisons for which there were sales at prices at or above the COP, we based NV on the home market prices to the home market customers. We made circumstance-of-sale adjustments for commissions and credit, where appropriate in accordance with section 773(a)(6)(C) of the Act. We also made adjustments, where applicable, for other discounts and indirect selling expenses in accordance with section 773(a)(6)(B)(ii) of the Act.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with

section 773(a)(6)(A), we added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (''COM'') of the U.S. product, we based NV on CV. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on CV.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. *See also* 19 CFR 351.412. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. *See* 19 CFR 351.412(2)(iii). For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. *See* 19 CFR 351.412(2)(i). For CEP, it is the level of the constructed sale from the exporter to the affiliated importer. *See* 19 CFR 351.412(c)(ii).

To determine the LOT of a sale, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Substantial differences in selling activities are a necessary, but not sufficient condition for determining that there is a difference in the stage of marketing. *See* 19 CFR 351.412(C)(2). If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from Mukand and Viraj about the marketing stages involved in their respective U.S. and home market sales, including a description of the selling activities performed by Mukand and Viraj for each channel of distribution. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different categories of sales, the functions and activities should be dissimilar.

In the present review, while Mukand requested an LOT adjustment, Viraj did not; the Department nonetheless considered LOT adjustments for both Mukand and Viraj. To determine whether an adjustment was necessary for either company, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

Mukand

In the home market (''HM''), Mukand reported three levels of trade. *See* Mukand's Sections B and C questionnaire response, dated April 7, 2003 (''*Mukand's Sections B & C response*'') at 18. Mukand sold through four channels of distribution in the HM. *See Mukand's Sections B & C response,* at 10. The Department has preliminarily determined that in each of these four channels of distribution, only minor differences in selling functions existed during the POR. *See* Antidumping Duty Administrative Review of Stainless Steel Wire Rods from India: Level of Trade Analysis, dated December 12, 2003 (''*LOT Memorandum*''). Because the Department has preliminarily determined that only minor differences exist between selling functions in each of the four HM channels of distribution, we preliminarily determine that there is one LOT in the HM.

For the U.S. market, Mukand reported one level of trade. *See Mukand's Sections B & C response* at 52. For its U.S. sales, Mukand reported two channels of distribution: EP sales made to order to an unaffiliated customer before importation; and CEP sales sold after importation. For details of these sales, *see Agency Sales Memorandum.* For its EP sales, Mukand's sales were made by its wholly-owned subsidiary, MIL, which was based in the United Arab Emirates during the POR, directly to an unaffiliated U.S. customer. For its CEP sales, PMS sold Mukand's subject merchandise after importation on an agency basis to unaffiliated customers in the United States. *See Agency Sales Memorandum.* We examined the claimed selling functions performed by MIL for all U.S. sales and have determined that MIL provided the same level of services for both its EP and CEP sales to the United States. *See LOT Memorandum* at 6.

For EP sales in the U.S. market, Mukand provided the same level of services for both EP and NV sales with only minor differences. *See LOT Memorandum* at 6. After analyzing the selling functions performed for sales in the HM and EP sales in the U.S. market, we preliminarily determine that there is not a significant difference in the selling functions performed in the home market and U.S. market, and that these sales are made at the same LOT. *See LOT Memorandum* at 6.

In order to determine whether NV was established at a different LOT than CEP, we examined stages in the marketing process and selling functions between Mukand and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transactions, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade than the CEP level of trade. After analyzing the selling functions performed for sales in the HM and CEP sales in the U.S. market, we preliminarily determine that there is no significant difference in the selling functions performed in the home market and U.S. market, and that these sales are made at the same LOT. *See LOT Memorandum* at 6.

Mukand did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and the Indian markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See LOT Memorandum.* Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there

is no significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. *See LOT Memorandum* at 6. Thus, we find that Mukand's NV and CEP sales were made at the same LOT, and no LOT adjustment or CEP offset need be granted.

Viraj

In accordance with the principles discussed above, we examined information regarding Viraj's distribution systems in both the United States and Indian markets, including selling functions, classes of customer, and selling expenses for Viraj.

Viraj claimed three levels of trade in the home market. *See* Viraj Section B and C Questionnaire Response, dated April 4, 2003 (''*Viraj Section B and C Response*'') at B–13. Additionally, Viraj reported that it sold through one channel of distribution in the home market: directly to unaffiliated customers (''actual user'', ''trading company'', and ''distributors''). *See Viraj Section B and C Response* at B–6. For sales in the home market, Viraj reported that all of its sales are sold ex-works. *See Viraj Section B and C Response* at B–9. Viraj reported that it performs the following selling functions in the home market: price negotiations, order processing, and customer communication. *See* Viraj Section A Questionnaire Response, dated March 18, 2003, at A–12. Because there is only one channel of distribution in the home market and identical selling functions are performed for all home market sales, we preliminarily determine that there is one LOT in the home market.

Viraj claimed three levels of trade in the U.S. market. *See Viraj Section B and C Response* at C–13. Viraj reported that it sold through one channel of distribution in the U.S. market, directly from its mill to its U.S. affiliate (*i.e.*, VUI). *See Viraj Section B and C Response* at C–6. The Department examined the selling functions and services performed by Viraj to its U.S. affiliate, VUI. We found that the selling functions (*i.e.*, price negotiations, order processing, and customer communication) Viraj performs after the section 772(d) adjustment are the same for all of its U.S. sales. *See* Viraj Section A Questionnaire Response March 18, 2003 (''*Viraj March 18, 2003 Response*'') at A–14. Therefore, we preliminarily determine that Viraj has one LOT in the U.S. market based on its selling functions to the United States.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between (1) Viraj and its home market customers and (2) Viraj and its affiliated U.S. reseller, VUI, after deductions for expenses and profits. Specifically, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade than the CEP level of trade.

Viraj did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Indian markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. For CEP sales, we found that Viraj provided many of the same selling functions and expenses for its sale to its affiliated U.S. reseller VUI as it provided for its home market sales, including price negotiation, order processing, and customer communication. Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is no significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. Thus, we find that Viraj's NV and CEP sales were made at the some LOT, and no LOT adjustment or CEP offset need be granted.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for Isibars, Mukand, and Viraj for the period December 1, 2001 through November 30, 2002:

Producer/Manufacturer/Exporter	Weighted-average margin (percent)
Isibars Steel	48.80
Mukand Limited	18.67
Viraj Group	17.16

The Department will disclose calculations performed for these preliminary results within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. *See* 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Further, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment

Upon issuance of the final results of this review, the Department shall determine, and the CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department has calculated an assessment rate applicable to all appropriate entries. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value, or entered quantity, as appropriate, of the examined sales for that importer. Upon completion of this review, where the assessment rate is above de minimis, we will instruct BCBP to assess duties on all entries of subject merchandise by that importer.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the

rate for a particular company is de minimis, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 48.80 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 12, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31354 Filed 12–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533–839]

Notice of Initiation of Countervailing Duty Investigation: Carbazole Violet Pigment 23 From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Sean Carey at (202) 482–3964, Office of AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigation

The Petition

On November 21, 2003, the U.S. Department of Commerce (the Department) received a petition filed in proper form by Sun Chemical Corporation and Nation Ford Chemical Company (collectively, the petitioners). The Department received supplemental information to the petition from the petitioners on December 5, 2003.

In accordance with section 702(b)(1) of the Act, petitioners allege that producers or exporters of carbazole violet pigment 23 (CVP-23) in India receive countervailable subsidies within the meaning of section 701 of the Act, and that imports from India are materially injuring, or are threatening material injury, to an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate. *See infra*, ''Determination of Industry Support for the Petition.''

Period of Investigation

The anticipated period of investigation (POI) is January 1, 2002 through December 31, 2002.

Scope of Investigation

The merchandise covered by this investigation is carbazole violet 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5, 15 5,15-diethy-5,15-dihydro-*, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[1] The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the investigation.

The merchandise subject to this investigation is classifiable under subheading 3204.17.9040 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 under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

In accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures and section 702(b)(4)(A)(ii) of the Tariff Act of 1930, we held consultations with the Government of India (''GOI'') regarding this petition on December 9, 2003. *See Memorandum to the File from Sean Carey: Consultations with the Government of India Regarding the Countervailing Duty Petition on Carbazole Violet Pigment 23*, dated December 10, 2003.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition satisfies this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the

[1] Please note that the bracketed section of the product description, [3,2-b:3',2'-m], is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* December 4, 2003, amendment to petition (supplemental petition) at 8.

domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the petition covers a single class or kind of merchandise, CVP-23, as defined in the ''Scope of Investigation'' section, above. The petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Further, based on our analysis of the information presented to the Department by the petitioners, we have determined that there is a single domestic like product which is consistent with the definition of the ''Scope of the Investigation'' section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that the petitioners have established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 702(c)(4)(D) of the Act. In addition, the Department received no opposition to the petitions from domestic producers of the like product. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. Thus, the requirements of section 702(c)(4)(A)(ii) of the Act also are met.

Accordingly, we determine that the petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See Countervailing Duty Investigation Initiation Checklist: Carbazole Violet Pigment 23 (CVP-23) in the Forms of Crude Pigment, Presscake and Dry Color Pigment from India* (December 11, 2003) (Initiation Checklist) at Attachment II, on file in the Central Records Unit, Room B-099 of the Department of Commerce.

Injury Test

Because India is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India are materially injuring, or are threatening material injury to, an industry in the United States.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that; (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India (a full description of each program is provided in the *CVD Initiation Checklist*):

1. The Duty Entitlement Passbook Scheme (DEPS)/ Post-Export Credits
2. Export Promotion Capital Goods Scheme (EPCGS)
3. Export Processing Zones (EPZ)/ Export-Oriented Units (EOU) Programs
4. Income Tax Exemption Scheme (Sections 10A, 10B, and 80 HHC)
5. Pre-Shipment Export Financing
6. Exemption of Export Credit from Interest Taxes
7. Market Development Assistance (MDA)
8. Special Imprest Licenses
9. Central Value Added Tax (CENVAT) Scheme

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of subsidized imports from India of the subject merchandise.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, domestic prices, revenue, profit-to-sales ratios, production employment, capacity utilization, and domestic market share. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information.

The Department has assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist*.

Initiation of Countervailing Duty Investigation

Based on our examination of the petition on CVP-23, and petitioners' responses to our requests for supplemental information clarifying the petition, we have found that the petition meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether

[2] *See USEC, Inc., v. United States*, 132 F. Supp. 2d 1,8 (CIT 2001), citing *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988). *See also High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

manufacturers, producers, or exporters of CVP-23 from India receive countervailable subsidies. Unless the deadline is extended, we will make our preliminary determination no later than 65 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 702(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than January 5, 2004, whether there is a reasonable indication that imports of CVP-23 from India are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 11, 2003.

James Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00597 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, DOC.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday, January 6, 2004, from 1 p.m. to 5 p.m. These times and the agenda topic described below may be subject to change. Refer to the web page listed below for the most up-to-date meeting agenda.

Place: The meeting will be held at the Marriott DC at Metro Center, 775 12th Street NW., Washington, DC.

Status: The meeting will be open to public participation with a 60-minute time period set aside for verbal statements or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal statement will be limited to a total time of five (5) minutes. Written statements (at least 35 copies) should be received in the SAB Executive Director's Office by December 31, 2003, to provide sufficient time for SAB review. Written statements received by the SAB Executive Director after December 31, 2003, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters To Be Considered: The only topic on the meeting agenda is the report of the NOAA Research Review Team.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–3515, E-mail: *Michael.Uhart@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: December 15, 2003.

Louisa Koch,

Deputy Assistant Administrator, OAR.

[FR Doc. 03–31254 Filed 12–18–03; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 20, 2004.

Title, Form, and OMB Number: TRICARE Prime Enrollment/Disenrollment Applications; OMB Number 0720–0008.

Type of Request: Reinstatement.

Number of Respondents: 20,689.

Responses Per Respondent: 1.

Annual Responses: 20,689.

Average Burden Per Response: 7 minutes.

Annual Burden Hours: 2,150.

Needs and Uses: These collection instruments serve as applications for the enrollment, disenrollment, and Primary Care Manager (PCM) Change for the Department of Defense's TRICARE Prime program established in accordance with Title 10, U.S.C., Section 1099, which calls for a healthcare enrollment system. Monthly payment options for retiree enrollment fees for TRICARE Prime are established in accordance with Title 10 U.S.C., section 1097a(c). The information collected on the TRICARE Prime Enrollment Application/PCM Change Form provides the necessary data to determine beneficiary eligibility, to identify the selection of a health care option, and to change the designated PCM when the beneficiary is relocating or merely requests a local PCM change, in accordance with the National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106–398, section 723(b)(E). The TRICARE Prime Disenrollment Application serves to disenroll an enrollee from TRICARE Prime on a voluntary basis.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher—Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Jacqueline Davis—Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–31279 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 20, 2004.

Title, Form, and OMB Number: Family Support Center Individual/Family Data Card; OMB Number 0701–0070.

Type of Request: Extension of a Currently Approved Collection.

Number of Respondents: 10,000.

Responses Per Respondent: 3.

Annual Responses: 30,000.

Average Burden Per Response: 16 minutes.

Annual Burden Hours: 2,600.

Needs and Uses: This information collection is necessary to obtain demographic data about individuals and family members who utilize the services of the United States Air Force Family Support Center. It is also a mechanism for tracking the services provided in order to determine program usage and trends as well as for the purpose of program evaluation, service targeting, and future budgeting. It also provides demographic data on volunteers and tracks volunteer service.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher—Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Jacqueline Davis—Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–31280 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 20, 2004.

Title, Form, and OMB Number: Non-Prior Service and Prior Service Accessions; AETC Forms 1319, 1325, and 1419; OMB Number 0701–0079.

Type of Request: Extension of a Currently Approved Collection.

Number of Respondents: 110,231.

Responses Per Respondent: 1.

Annual Responses: 110,231.

Average Burden Per Response: 38 minutes average.

Annual Burden Hours: 69,105.

Needs and Uses: This information collection is necessary for recruiters to determine applicant qualifications when conducting an interview. Information from the interview will determine if additional documents on law violations, citizenship verification, and education are needed. Applicants who have reached a certain age, marital status, or classification are required to submit financial information. Additionally, the AETC 1419 is used to collect police reports, law violation disposition reports, and court documents used to determine an applicant's moral qualification.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. William Nickerson—Written comments and recommendations on the proposed information collection should be sent to Mr. Nickerson at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis—Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31281 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 20, 2004.

Title, Form, and OMB Number: Air Force Academy Candidate Activities Record; OMB Number 0701–0063.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 8,510.

Responses Per Respondent: 1.

Annual Responses: 8,510.

Average Burden Per Response: 45 minutes.

Annual Burden Hours: 6,383.

Needs and Uses: This information collection is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. William Nickerson—Written comments and recommendations on the proposed information collection should be sent to Mr. Nickerson at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis—Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31282 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 20, 2004.

Title, Form, and OMB Number: Air Force Academy Candidate Personal Data Record; OMB Number 0701–0064.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 8,500.

Responses Per Respondent: 1.

Annual Responses: 8,500.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 4,250.

Needs and Uses: This information collection is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. William Nickerson—Written comments and recommendations on the proposed information collection should be sent to Mr. Nickerson at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis—Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31283 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0005]

Federal Acquisition Regulation; Submission for OMB Review; Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project

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 (9000–0005).

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 architect-engineer and related services questionnaire for specific project (SF 255). A request for public comments was published at 68 FR 60093, October 21, 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 January 20, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form (SF) 255, Architect-Engineer and Related Services Questionnaire for Specific Projects is used by all Executive agencies to obtain information from architect-engineer (A-E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A-E firm to perform the specific project. The form is designed to provide a uniform method for A-E firms to submit information on experience, personnel, capabilities of the A-E firm to perform, along with information on the consultants they expect to collaborate with on the specific project.

The SF 330, Architect-Engineer Qualifications will replace SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects. The SF 330 reflects current architect-engineer practices in a streamlined and updated format, and is organized into data blocks that readily support automation. The final version of the SF 330 has been published in the **Federal Register** and mandatory use is set for June 8, 2004. Therefore, it is necessary to extend this SF 255 for six months to cover this period of time.

B. Annual Reporting Burden

Respondents: 5,000.

Responses Per Respondent: 4.

Annual Responses: 20,000.

Hours Per Response: 1.2.

Total Burden Hours: 24,000.

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. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

Dated: December 15, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–31344 Filed 12–18–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0004]

Federal Acquisition Regulation; Submission for OMB Review; Architect-Engineer and Related Services Questionnaire (SF 254)

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 (9000–0004).

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 architect-engineer and related services questionnaire (SF 254). A request for public comments was published at 68 FR 60093, October 21, 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 January 20, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form (SF) 254, Architect-Engineer and Related Services Questionnaire is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A-E) projects. The form is submitted annually as required by 40 U.S.C. 541—544 by firms wishing to be considered for government A-E contracts. The information obtained on this form is used to determine if a firm should be solicited for A-E projects.

The SF 330, Architect-Engineer Qualifications will replace SF 254, Architect-Engineer and Related Services Questionnaire. The SF 330 reflects current architect-engineer practices in a streamlined and updated format, and is organized into data blocks that readily support automation. The final version of the SF 330 has been published in the **Federal Register** and mandatory use is set for June 8, 2004. Therefore, it is necessary to extend this SF 254 for six months to cover this period of time.

B. Annual Reporting Burden

Respondents: 5,000.
Responses Per Respondent: 7.
Total Responses: 35,000.
Hours Per Response: 1.
Total Burden Hours: 35,000.

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. 9000–0004, Architect-Engineer and Related Services Questionnaire (SF 254), in all correspondence.

Dated: December 15, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–31345 Filed 12–18–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Identification Technologies will meet in closed session on February 18–19, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess current technologies and operational concepts to identify and track individuals and materiel.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. In this assessment, the task force's investigation will encompass defense, intelligence, and commercial systems, including compartmented technology in development and promising technologies in the lab that are not yet deployed. Technologies will include passive/active, line of sight/non-line of sight and cooperative/non-cooperative. Potential mechanisms include predictive behavior modeling based on threat characteristics (attack modality, ideological makeup, social, ethnic, religious and political tendencies, *etc.*), identification technologies such as biometrics (iris scans, facial features, voice prints, *etc.*), DNA matching, and advanced non-identification technologies such as EO, RF, hyperspectral, and fluid surface assembly (FSA) sensors.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: December 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31277 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Identification Technologies will meet in closed session on January 22–23, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess current technologies and operational concepts to identify and track individuals and materiel.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. In this assessment, the task force's investigation will encompass defense, intelligence, and commercial systems, including compartmented technology in development and promising technologies in the lab that are not yet deployed. Technologies will include passive/active, line of sight/non-line of sight, and cooperative/non-cooperative. Potential mechanisms include predictive behavior modeling based on threat characteristics (attack modality, ideological makeup, social, ethnic, religious and political tendencies, *etc.*), identification technologies such as biometrics (iris scans, facial features, voice prints, *etc.*), DNA matching, and advanced non-identification technologies such as EO, RF, hyperspectral, and fluid surface assembly (FSA) sensors.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: December 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31278 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Novel Propellant Technology for Exclusive, Partially Exclusive or Non-exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to novel propellant formulation as described in U.S. Patent application Amine Azide Propellant (U.S. Patent Application No. 10/398885). Any license shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, Attn: AMSRL–DP–T/Bldg. 459, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–31335 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Novel Conformal and Flexible Imaging Technology for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel conformal and flexible imaging technology as described in U.S. Patent No. 6,580,413; entitled ''Method and Apparatus for the Low Cost Formation and Control of Images on Conformal Materials'' issued June 17, 2003. Any license shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, Attn: AMSRL–DP–T/Bldg. 459, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–31336 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Novel Shaped Charge Technology for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to novel shaped charge technology as described in U.S. Patent Application ''Shaped Charge Explosive Device and Method of Making Same'' (U.S. Patent Application No. 10/421899. Any license shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–DP–T/Bldg. 459, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–31337 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Regional Comprehensive Draft Environmental Impact Statement for the Indian River County Beach Restoration Project, Indian River County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the implementation of beach restoration measures in Indian River County, Florida. The Corps will be evaluating a permit application for the work under the authority of section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act. The DEIS will be used as a basis for the permit decision and to ensure compliance with the National Environmental Policy Act (NEPA). Interested parties are invited to submit comments on or before February 9, 2004 to assure full consideration during the scoping process.

FOR FURTHER INFORMATION CONTACT: Questions or comment submissions should be addressed to Ms. Irene Sadowski, Jacksonville District at U.S. Army Corps of Engineers, 2460 N. Courtney Parkway, Suite 204, Merritt Island, FL 32953, phone: (321) 453–7655, Ext. 12 or e-mail: *Irene.sadowski@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Proposed Project. The applicant proposes to place approximately 459,700 cubic yards of beach-quality material along 1.35 miles of shoreline to restore erosion-damaged beaches and enhance existing dunes within Sector 7 in accordance with the County's comprehensive shore

protection program. The Florida Department of Environmental Protection has identified 4,000 feet of the project area as an area of Critical Erosion. The project is being proposed to: mitigate the historical erosion loss; protect upland properties and infrastructure; establish a viable beach and dune system for sea turtles; and enhance the recreational use of the County's eroded beaches.

Within Sector 7, continued erosion has limited the availability of quality beaches and has increased the cost of protecting the shoreline. To protect shorefront properties within the area, extensive seawall construction has taken place within recent years. Without adequate large-scale measures to counteract erosion rates within this area, more shoreline armoring to protect property is likely to occur.

Beach restoration was recommended for this shoreline based on erosion rates, proximity of major structures to mean high water line, beach width, available sand resources and coastal dynamics. The goals of the beach restoration and dune enhancement are to optimize the performance and cost of the project while providing storm protection for the upland properties, limiting direct and indirect coverage of nearshore hardbottom habitats, creating additional nesting habitat for marine turtles, and providing greater recreational area along the County's beaches.

Indian River County recently completed a beach restoration project in Sectors 1 and 2 at the northern end of the County (Ambersand Beach Restoration Project), under the authority of the Department of the Army Permit Number 200001872 (IP–IS) and the Florida Department of Environmental Protection Permit Number 0166929–001–JC. This project involved the development of an Environmental Assessment and Regional Cumulative Impact Assessment. This regional assessment of the cumulative impacts associated with beach nourishment activities will be updated with this project and included in the DEIS as an appendix.

The DEIS intends to focus on Sector 7 and incorporate the effects of all future beach nourishment projects in less detail. Future projects within Indian River County with be added as supplements to the EIS when these projects come on line.

Alternatives. For the Sector 7 beach restoration project, the applicant has provided analysis of a number of alternatives, including the No Action Alternative, in addition to the proposed alternative. Alternatives to be evaluated in the DEIS include the use of sand retention structures and decreased fill volume. Other alternatives with the potential to further minimize environmental impacts may be included in the DEIS.

Issues. Issues related with this beach restoration project include impacts to nearshore hardbottom resources, impacts to Essential Fish Habitat, impacts to marine turtles including foraging habitat and nesting beaches, and beach access concerns.

Scoping and Public Involvement. The scoping process will involve Federal, State, County, and municipal agencies and other interested persons and organizations. A workshop was held at the Indian River County Commission Chambers, 1840 25th Street, Vero Beach, FL, by Indian River County on July 23, 2003, to solicit comments from interested organizations and individuals on the scope of the DEIS. Comments received included the use of public monies for the work, the need for the work, impacts to nearshore hardbottom reefs, alternative designs, and the need for public access. Issues brought forth may be considered during the EIS process.

Coordination. The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service under section 7 of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act.

DEIS Preparation. It is estimated that the DEIS will be available to the public by June 2004.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–31334 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Cease Preparation of a Draft Environmental Impact Statement/ Subsequent Environmental Impact Report for a Permit Application for the Proposed West Basin Marine Terminal Improvement Projects in the Port of Los Angeles, Los Angeles County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Cease preparation of Draft EIS/R.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Los Angeles District is no longer preparing a Draft Environmental Impact Statement/ Subsequent Environmental Impact Report (EIS/SEIR) covering the overall proposed West Basin improvement projects in the Port of Los Angeles. The Corps and the Los Angeles Harbor Department (LAHD) had previously circulated a Notice of Intent to prepare a Draft EIS/SEIR (**Federal Register,** July 5, 2002, Volume 67, Number 129) covering several terminal improvement projects in the geographic portion of the Port of Los Angeles known as the West Basin. This Draft EIS/SEIR is no longer being pursued. The Corps and the LAHD are in the process of preparing project specific Draft EIS/EIRs for both the China Shipping Terminal Improvements project at Berths 97–109, and the TraPac Terminal Improvements project at Berths 136–147. Both of these terminal projects were formerly elements of the larger West basin document. This notice does not indicate any change of status for these project specific proposals.

FOR FURTHER INFORMATION CONTACT: Phone messages or questions can be directed to Joshua Burnam, Project Manager, Regulatory Branch, Los Angeles District at: (213) 452–3294 or by e-mail at *Joshua.L.Burnam@usace.army.mil.*

Richard G. Thompson,

Colonel, US Army, District Engineer.

[FR Doc. 03–31266 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the West Onslow Beach and New River Inlet (Topsail Beach) Shore Protection Project, Pender County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Town of Topsail Beach is located on Topsail Island, a barrier island on North Carolina's central coast. The town has experienced severe erosion of the ocean shoreline, high vulnerability to storm overwash, and damage to numerous structures due to erosion and storms. The Water Resources Development Act (WRDA) of 1992 authorized a Federal Shore Protection Project to address these problems, but the project has not been constructed. The authorized project and the remaining ocean shoreline at Topsail Beach are now undergoing reevaluation studies to provide a basis for a decision regarding continuation of

Federal participation for the design and construction of the project. These studies will be documented in a General Reevaluation Report (GRR) accompanied by an Environmental Impact Statement (EIS).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Environmental Impact Statement (DEIS) can be answered by Ms. Jenny Owens; Environmental Resources Section; U.S. Army Engineer District, Wilmington; Post Office Box 1890; Wilmington, NC 28402–1890; telephone: (910) 251–4757.

SUPPLEMENTARY INFORMATION: WRDA of 1992 authorized the implementation of the West Onslow Beach and New River Inlet (Topsail Beach) Shore Protection Project, as described in the report of the Chief of Engineers dated November 19, 1991. However, the plan recommended for construction was not the National Economic Development (NED) plan, which would have provided a storm dune and beach, a rock terminal groin, and periodic beach nourishment. The rock groin was unacceptable to the State of North Carolina due to its inconsistency with hard structure rules of the Coastal Management Program. Therefore, the recommended plan did not include a groin and, instead, provided for more frequent beach nourishment to offset the sand retention that would have been provided by a groin. The recommended plan extended over a distance of approximately 3.6 miles along the oceanfront at the southern end of Topsail Beach and included a dune with a crest elevation of 13 feet above mean sea level (msl) fronted by a storm berm at elevation 9 feet msl and a beach berm at elevation 7 feet msl.

Reevaluation studies will address the currently authorized project and the remaining shoreline at Topsail Beach. The principal purpose of a Federal project would be the reduction of damages associated with hurricane and storm events and beach erosion. Potential benefits from the project would include protection of the town's structures and related infrastructure (*i.e.,* roads, utility lines, *etc.*), as well as improvements in aesthetic qualities and recreational opportunities at the beach.

The GRR studies will evaluate several alternatives to address shore protection and related issues at Topsail Beach. These alternatives may include: (1) Construction of berms and dunes along all or portions of the oceanfront within the study area; (2) Removal and/or relocation of structures; and (3) No Federal action. The maximum potential project length is approximately 4.6 miles (*i.e.,* from the Topsail Beach-Surf City town limits to New Topsail Inlet). The selection of final project features and reaches for inclusion in a recommended plan will be based on a maximization of new benefits.

During the GRR, potential estuarine, inlet, offshore, and upland sources of borrow material will be investigated, and quantities of sand required for berm and dune construction will be determined. Estimated sand volumes and placement frequency for project maintenance will also be developed.

Alternative methods of beach nourishment and dredging of offshore borrow areas will also be evaluated, including the use of an ocean-certified hydraulic pipeline or hopper dredge.

All private parties and Federal, State, and local agencies having an interest in the study are hereby notified of the study and are invited to comment at this time. A scoping letter requesting input to the study was sent to all known interested parties on February 14, 2001.

A formal scoping meeting is not planned at this time but may be held if it is determined that new information could be obtained that would not otherwise be available. All comments received as a result of this notice of intent and the previous scoping letter will be considered in the preparation of the DEIS.

Significant environmental resources to be addressed during project studies and in the DEIS include: (1) Endangered and threatened species; (2) Marine and estuarine resources; (3) Fish and wildlife and their habitats, including essential fish habitat; (4) Water quality; (5) Socioeconomic resources; and (6) Cultural resources. Efforts will be made to enhance resource conditions and minimize adverse impacts.

The lead agency for this project is the U.S. Army Corps of Engineers District, Wilmington. Cooperating agency status has not been assigned to any other agency. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State Laws and Executive Orders. The DEIS is currently scheduled for distribution to the public in the summer of 2004.

Dated: December 2, 2003.

W. Eugene Tickner, P.E.,

Deputy District Engineer, Programs and Project Management.

[FR Doc. 03–31339 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–CE–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Surf City and North Topsail Beach, NC, Shore Protection Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Surf City and North Topsail Beach are located on Topsail Island, a barrier island on North Carolina's central coast. Storm activity has resulted in severe erosion of the protective berm and dune along the ocean shoreline of the area, as well as damage to numerous structures and their contents. Studies conducted to address these problems were included in House Document 393, 102nd Congress, ''West Onslow Beach and New River Inlet, North Carolina,'' which was approved by Congress in 1992. This report recommended a hurricane protection and beach erosion control project for approximately 3.6 miles of oceanfront at Topsail beach, but determined that such improvements were economically infeasible for the northernmost portion of the island, including Surf City and North Topsail Beach. However, the six hurricanes that passed through the area during 1996–1999 inflicted heavy damages to these towns and, as a result, Congress directed that a review be made of the 1992 report to determine the advisability of modifying its recommendations with regard to shore protection for Surf City and North Topsail beach.

The potential for shoreline protection was subsequently reexamined in the ''Surf City and North Topsail Beach, North Carolina, Reconnaissance Report'' of May 2001, which recommended continued Federal participation a feasibility study. The feasibility study was initiated in 2002 and is ongoing.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Environmental Impact Statement (DEIS) can be answered by Ms. Jenny Owens; Environmental Resources Section; U.S. Army Engineer District, Wilmington; Post Office Box 1890; Wilmington, NC 28402–1890; telephone: (910) 251–4757.

SUPPLEMENTARY INFORMATION: Feasibility studies will investigate the entire oceanfront along Surf City and North Topsail Beach, except for portions of North Topsail Beach located within the Coastal Barrier Resources System (CBRS). The Coastal Barrier Resources Act of 1982 renders units of the CBRS

ineligible for Federal funding that could encourage their development. The principal purpose of a Federal project would be the reduction of damages associated with hurricane and storm events and beach erosion. Potential benefits from the project would include protection of the towns' structures and related infrastructure (*i.e.,* roads, utility lines, *etc.*), as well as improvements in aesthetic qualities and recreational opportunities at the beaches.

The feasibility studies will evaluate several alternatives to address shore protection and related issues. These alternatives may include: (1) Construction of berms and dunes along all or portions of the oceanfront within the study area; (2) Removal and/or relocation of threatened structures; and (3) No Federal action. The maximum potential project length is approximately 10 miles (the 17 miles from New River Inlet south to the Surf City-Topsail Beach town limits exclusive of approximately 7 miles within the CBRS). The selection of final project features and reaches for inclusion in a recommended plan will be based on a maximization of net benefits.

During the feasibility studies, potential estuarine, inlet, offshore, and upland sources of borrow material will be investigated, and quantities of sand required for berm and dune construction will be determined. Estimated sand volumes and placement frequency for project maintenance will also be developed.

Alternative methods of beach nourishment and dredging of offshore borrow areas will be evaluated, including the use of ocean-certified hydraulic pipeline and/or hopper dredges.

All private parties and Federal, State, and local agencies having an interest in the study are hereby notified of the study and are invited to comment at this time. A scoping letter requesting input to the study was sent to all known interested parties on February 14, 2001.

A formal scoping meeting is not planned at this time but may be held if it is determined that new information may be obtained that would not otherwise be available. All comments received as a result of this notice of intent and the previous scoping letter will be considered in the preparation of the DEIS.

Significant environmental resources to be addressed during project studies and in the DEIS include: (1) Endangered and threatened species; (2) Fish and wildlife and their habitats, including essential fish habitat; (3) Water quality; (4) Socioeconomic resources; and (5) Cultural resources. Efforts will be made to enhance resource conditions and minimize adverse impacts.

The lead agency for this project is the U.S. Army Corps of Engineers District, Wilmington. Cooperating agency status has not been assigned to any other agency. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State Laws and Executive Orders. The DEIS is currently scheduled for distribution to the public in the winter of 2005.

Dated: December 2, 2003.

W. Eugene Tickner, P.E.,

Deputy District Engineer, Programs and Project Management.

[FR Doc. 03–31338 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–CE–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Developing Hispanic-Serving Institution (HSI) Program

ACTION: Correction; notice reopening application deadline for certain applicants.

SUMMARY: We correct the postmark date listed in the *Transmittal of Applications* section of the notice published on December 16, 2003 (68 FR 70008).

SUPPLEMENTARY INFORMATION: On December 16, 2003, we published a notice in the **Federal Register** reopening the application deadline for certain applicants under the HSI Program. The postmark date listed in the *Transmittal of Applications* section of the notice published was incorrect. The last sentence under *Transmittal of Applications* should read, ''Your submittals must be postmarked no later than December 29, 2003.''

FOR FURTHER INFORMATION CONTACT: Ms. Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7576 or via Internet: *Darlene.Collins@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format, (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1001–1101d, 1103–1103g.

Dated: December 17, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–31405 Filed 12–17–03; 1:28 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Biological and Environmental Research Advisory Committee Renewal

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with section 102–3.60, title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Biological and Environmental Research Advisory Committee has been renewed for a two-year period beginning in December 2003. The Committee will provide advice to the Director, Office of Science, on the Biological and Environmental Research Program managed by the Office of Biological and Environmental Research.

The renewal of the Biological and Environmental Research Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in

accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee can be obtained from Mrs. Rachel M. Samuel at (202) 586–3279.

Issued in Washington, DC on December 11, 2003.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 03–31332 Filed 12–18–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–04ER04–06: Natural and Accelerated Bioremediation Research Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. The goal of the NABIR program is to provide the fundamental science that will serve as the basis for development of cost-effective bioremediation and long-term stewardship of radionuclides and metals in the subsurface at DOE sites. The focus of the program is on understanding the role of microorganisms in long-term immobilization of contaminants in place, and the potential for their remobilization. Contaminants of interest are uranium, technetium, plutonium, chromium or mercury. NABIR is focused on subsurface sediments below the zone of root influence and includes both the vadose (unsaturated) zone and the saturated zone (groundwater and sediments). Applications should describe research projects in one or more of the following program categories: (1) Biogeochemistry, Biotransformation, Community Dynamics and Microbial Ecology, or Assessment; (2) Interdisciplinary studies that integrate research from more than one NABIR element; or (3) Projects to be performed at the NABIR Field Research Center (FRC) addressing field scale processes that immobilize uranium and/or technetium; field teams must include, at a minimum, expertise in microbiology, geochemistry and hydrology.

DATES: Researchers are strongly encouraged to submit a preapplication for programmatic review. Preapplications should be submitted on or before February 6, 2004, for review for programmatic relevance.

The deadline for receipt of formal applications is 4:30 p.m., E.S.T., March 9, 2004, to be accepted for merit review and to permit timely consideration for awards late in Fiscal Year 2004 or in early Fiscal Year 2005.

ADDRESSES: Preapplications referencing Program Notice DE–FG01–04ER04–06, should be sent by E-mail to: *paul.bayer@science.doe.gov.*

Formal applications referencing Program Notice DE-FG01–04ER04–06, must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://www.e-center.doe.gov/.* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS Web site. IIPS offers the option of using multiple files, please limit submissions to one volume and one file if possible, with a maximum of no more than four PDF files. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov,* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit an application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 or (301) 903–3604, in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Bayer, Environmental Remediation Sciences Division, SC–75/Germantown Building, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, telephone: (301) 903–5324, e-mail: *paul.bayer@science.doe.gov,* fax: (301) 903–8519. The full text of Program Notice DE–FG01–04ER04–06, is available via the Internet using the following Web site address: *http://www.science.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION:

Background

For more than 50 years, the U.S. created a vast network of more than 113 facilities for research, development, testing and production of nuclear weapons. As a result of these activities, subsurface contamination has been identified at over 7,000 discrete sites across the U.S. Department of Energy complex. With the end of the Cold War threat, the DOE has shifted its emphasis to remediation, decommissioning, and decontamination of contaminated groundwater, sediments, and structures at its sites. DOE is currently responsible for remediating 1.7 trillion gallons of contaminated groundwater and 40 million cubic meters of contaminated soil. It is estimated that more than 60 percent of DOE facilities have groundwater contaminated with metals or radionuclides. More than 50 percent of all DOE facilities have soils or sediments contaminated with radionuclides and metals. While virtually all of the contaminants found at industrial sites nationwide can also be found at DOE sites, many of the metals and most of the radionuclides are unique to DOE sites. The NABIR program aims: (1) To provide the fundamental knowledge that may lead to new remediation technologies or strategies for radionuclides and metals; and (2) to advance the understanding of the key microbiological and geochemical processes that control the effectiveness of *in situ* immobilization as a means of long term stewardship, and how these processes impact contaminant transport.

While bioremediation of organic contaminants involves their biotransformation to benign products, such as carbon dioxide, bioremediation of radionuclides and metals involves their removal from the aqueous phase to reduce risk to humans and the environment. Microorganisms can directly affect the solubility of radionuclides and metals by changing their oxidation state to a reduced form that leads to *in situ* immobilization. Or,

microorganisms can indirectly immobilize radionuclides and metals through the reduction of inorganic ions that can, in turn, chemically reduce contaminants to less mobile forms. The long term stability of these reduced contaminants is as yet unknown.

NABIR Program

The goal of the NABIR program is to provide the fundamental science that will serve as the basis for development of cost-effective bioremediation and long-term stewardship of radionuclides and metals in the subsurface at DOE sites. An important aspect to the NABIR program is to assess factors controlling the long-term stability of the immobilized contaminants and to devise approaches (biological/chemical) to maintain their immobilization through the stewardship phase. Naturally-occurring subsurface microbes may be involved in intrinsic bioremediation of radionuclides and metals by reduction and immobilization, either directly or indirectly. However, these natural processes (known as natural attenuation) typically occur at fairly slow rates, and there may be a need to use biostimulation to enhance the rates. The primary focus of the NABIR program is on biostimulation strategies, due to the ubiquity of metal-reducers in nature. Immobilized radionuclides and metals are not removed from the subsurface as may occur with excavation, pump and treat, or biodegradation of organic contaminants. Thus, understanding the potential for remobilization of contaminants is of special interest.

The focus of the NABIR program is on radionuclides and metals that: (1) Pose the greatest potential risk to humans and the environment at DOE sites; and (2) are amenable to immobilization by means of bioremediation. Thus, research is focused on the radionuclides uranium, technetium and plutonium and the metals chromium and mercury. Radioactive contaminants such as tritium and cobalt are not a focus because of their relatively short half lives, and strontium and cesium are not addressed because they are not readily amenable to biotransformation. Research is focused on subsurface sediments below the zone of root influence and includes both the vadose (unsaturated) zone and the saturated zone (both groundwater and sediments). Research on phytoremediation will not be supported by this solicitation.

NABIR is oriented toward areas that have low levels of widespread contamination; it is too costly to clean up those situations with existing technologies. Uranium, technetium, and chromium can be especially mobile in the subsurface under certain conditions; they are risk-driving contaminants at some DOE sites. The effects of co-contaminants, such as nitrate, complexing agents, (such as EDTA) and chlorinated solvents, (such as trichloroethylene and carbon tetrachloride) on the behavior of radionuclides and metals in the subsurface is also of interest to the NABIR program. The NABIR Program supports hypothesis-driven, basic research that is more fundamental in nature than demonstration projects.

The NABIR program consists of four interrelated Science Elements (Biogeochemistry, Biotransformation, Community Dynamics and Microbial Ecology, and Biomolecular Science and Engineering). Innovative method development for the Science Elements is supported under the Assessment Element. The program also includes an element addressing ethical, legal and societal issues called Bioremediation and its Societal Implications and Concerns (BASIC). The NABIR program strongly encourages researchers to integrate laboratory and field research at DOE or DOE-relevant sites. More information on the NABIR program may be found at: *http://www.lbl.gov/NABIR/.*

The NABIR Field Research Center (FRC) and Other Field Research Sites

To encourage hypothesis-based field research and process-level understanding, the NABIR program established the Field Research Center (FRC) for long-term field studies. The FRC provides a site for investigators to conduct field-scale research and to obtain DOE-relevant subsurface samples for laboratory-based studies of bioremediation, and it is located on the U.S. Department of Energy Oak Ridge Reservation in Oak Ridge, Tennessee. The FRC is operated by the Environmental Sciences Division of the Oak Ridge National Laboratory, and it includes a contaminated and a background (uncontaminated control) area for in situ studies. Both areas are located in Bear Creek Valley (BCV) within the Y–12 Plant area.

The contaminated research site at the FRC is a 98-hectare plot containing uranium, nitrate, technetium-99, strontium, and cadmium in groundwater, soils, and sediments. To a lesser extent, metals such as mercury, copper, zinc, and lead, and organics, such as acetone, methylene chloride, tetrachloroethylene, and toluene are also present. The contaminated area includes the groundwater plume that originated from the S–3 Waste Disposal Ponds.

The background area is approximately 163 hectares and is located in West Bear Creek Valley, about 2 km from the contaminated area. The area lies directly along the geologic strike of the contaminated area and is, therefore, underlain by nearly identical geology, mineralogy, and structure. No known contaminants have been disposed at this location throughout the history of DOE operations. The majority of the area is heavily wooded, with the exception of the Bear Creek floodplain.

Both the background and contaminated areas are well-characterized and well-instrumented, and should be available for five to ten years. The water table resides between 0 and 3 meters below the surface and is readily accessible through multilevel groundwater monitoring wells.

The FRC is responsible for general site characterization activities and provides a rich database for use by NABIR researchers. The FRC is responsible for data management, systems integration, and fundamental hydrological and geochemical modeling of the contaminated and background sites. The FRC makes these data and models accessible to all researchers. *See: http://www.esd.ornl.gov/nabirfrc* for more detailed information on the NABIR FRC.

While the FRC provides a major focus for the NABIR program, it is recognized that other sites that represent the different hydrogeological regimes found at DOE sites will also be valuable to researchers. A large fraction of the national inventory of DOE wastes resides in unconsolidated, porous media in relatively thick, vadose zones and in groundwaters low in soluble organic carbon. For this reason, NABIR investigators are encouraged to take advantage of opportunities to collect and analyze samples from arid western environments that typify the Hanford Reservation and Uranium Mill Tailings Remedial Action (UMTRA) sites. For further information on NABIR Field Research, please contact Mr. Paul Bayer (*paul.bayer@science.doe.gov*), the NABIR Field Activities Manager.

Resources at DOE User Facilities

Applicants are encouraged to propose making use of the capabilities provided by DOE's National Scientific User Facilities. The instrumentation and experimental facilities at these user facilities are available free of charge to users who agree to publish their findings in the peer reviewed literature. Applicants may be interested in one or

more of the following DOE user facilities:

Applicants may be interested in the capabilities offered at the Environmental Molecular Sciences Laboratory (EMSL), which is located at the Pacific Northwest National Laboratory in Richland, WA. EMSL provides users with unique and leading edge instrumentation for molecular-level studies, including a wide variety of capabilities in spectroscopy and microscopy, particle characterization and imaging, and meter-scale reactive transport. These experimental capabilities are located within EMSL's high field magnetic resonance, high performance mass spectrometry, interfacial and nanoscale science and optical imaging and spectroscopy facilities. In addition, the high-performance molecular science computing facility within the EMSL includes an 11.8 TeraFlop supercomputer for use in reactive transport and flow modeling. *See http://www.emsl.pnl.gov* for further information.

Applicants may also be interested in the molecular-level capabilities for studying the speciation, properties or behavior of contaminants that are available through DOE's synchrotron radiation facilities. Information concerning the types of analytical techniques available at specific synchrotron facilities is available through EnviroSync, a national organization that represents molecular environmental science at the synchrotrons. *See http://www.cems.stonybrook.edu/envirosync/* for further information.

Current Request for Applications

Research projects should address the scientific aims of: (1) Individual NABIR elements including Biogeochemistry, Biotransformation, Community Dynamics and Assessment; (2) Integrative, interdisciplinary studies that involve research from more than one element; or (3) Field research projects to be performed at the NABIR FRC in Oak Ridge, Tennessee. The focus is on field research, or laboratory studies that can be scaled to the field, to provide supporting information for current or future field research. The NABIR FRC provides an opportunity for researchers to work at a DOE site in collaboration with scientists from different research elements. Studies at the NABIR FRC show that microbial reduction of radionuclides and metals is affected by the presence of nitrate and low pH. Thus, research into microbial mechanisms involved in the reduction of radionuclides and metals in this type of subsurface environment is of special interest.

Biogeochemistry: The goal of this element is to understand the fundamental biogeochemical reactions that would lead to long-term immobilization of metal and radionuclide contaminants in the subsurface, and the potential for remobilization. The focus is on reactions that govern the concentration, chemical speciation, and distribution of metals and radionuclides between the aqueous and solid phases. Biogeochemical reactions in subsurface environments are influenced by a wide variety of factors, including the availability of electron donors and acceptors, the nature of the microbial community, the chemical species or form of contaminant, the hydrogeology of the site, and the nature of the environmental matrix. Often several competing redox reactions make the prediction of the substrates, products, and kinetics difficult. The biogeochemical reactions are further complicated by the sorption of contaminants and reaction products to mineral surfaces, and the presence of natural organic matter and co-contaminants. The research challenge is to identify and prioritize the key biogeochemical reactions that are needed to predict the rate and extent of reactions that result in the immobilization of radionuclides and metals. New and creative scientific approaches are sought that address the following fundamental research questions:

- To increase immobilization of radionuclides and metals, what are the principal biogeochemical reactions that govern the concentration, chemical speciation, and distribution of metals and radionuclides between the aqueous and solid phases (with an emphasis on natural geological matrices)? What are the thermodynamic and kinetic controls on these reactions? How do factors, such as co-contaminants, sorption processes, and terminal electron acceptors (*e.g.*, nitrate, iron, sulfate), influence these reactions?
- Under what conditions would the contaminants remobilize, and what alterations to the environment would increase the long term stability of metals and radionuclides in the subsurface?
- What influence do hydrological processes such as reactive transport, advective/dispersive transport and colloidal transport have on the biological availability, biotransformation, and movement of radionuclides and metals?

Biotransformation: The goal of this element is to understand the mechanisms of microbially mediated transformation of metals and radionuclides in subsurface environments leading to *in situ* immobilization and long term stability. Physiological studies of the biotransformation of metals and radionuclides by subsurface microorganisms will provide the knowledge base needed to understand intrinsic bioremediation and to stimulate biotransformation *in situ*. DOE subsurface sites encompass a range of redox environments where contaminants, such as uranium are present. One challenge is to understand the impact of these environments on microbial physiological processes involved in the biotransformation of radionuclides and metals to an immobilized form. Knowledge of the metabolic pathways for biotransformation of these contaminants by naturally occurring microbial communities in vadose zones, saturated zones and the waste plume is needed. A second challenge is to accelerate the rates of these physiological processes *in situ*, in complex subsurface environments. Biotransformation of metals and radionuclides in the subsurface is poorly understood, and predictive models based on laboratory studies have not always accurately simulated the observed fate of metals and radionuclides in the field. It is important to understand the kinetics of desirable metal and radionuclide biotransformations and the physicochemical factors affecting those kinetics in the field. Research is needed to address questions, such as:

- What are the primary metabolic pathways for biotransformation of radionuclides and/or metals by subsurface microorganisms at DOE sites, such as the FRC? Physiological processes studied at the laboratory scale will need to demonstrate how results will be scaled to the field.
- How can metal reduction be harnessed or accelerated to immobilize radionuclides and/or metals in the subsurface? Can *in situ* production of organic acids, chelators, or extracellular polymers affect contaminant mobility?
- What environmental controls affect microbial physiological processes involved in radionuclide and metal biotransformations leading to immobilization in vadose and saturated zones? What factors inhibit these biotransformations *in situ*?
- How can we quantify *in situ* biotransformation kinetics so that these parameters can be applied to numerical models of field scale bioremediation?

Community Dynamics and Microbial Ecology: The goal of this element is to

determine the potential for natural microbial communities to immobilize radionuclides and metals. In particular, research focuses on: (1) Understanding the structure and function of microbial communities in the subsurface at DOE sites contaminated with metals and radionuclides; and (2) identifying and optimizing the *in situ* growth of microorganisms that transform radionuclides and metals. This research will enhance our ability to predict the effectiveness of intrinsic bioremediation and to optimize microbial community composition for *in situ* immobilization of these contaminants. Diverse microbial communities can be found in subsurface environments. These communities represent an untapped catalytic potential for biotransformation of radionuclides and metals. Most of these microbes, however, are as yet uncultured using current methods. One challenge is to determine if sufficient genotypic and/or phenotypic potential exists to support natural and/or accelerated (biostimulated) bioremediation. Knowledge of microbial community structure and function may ultimately provide the ability to control or stimulate subsurface communities capable of biotransformation of radionuclides and metals. A second challenge is to optimize the community structure and activity for immobilization and metals, and to determine the long term stability of bioremediative communities. Research is needed to address questions, such as:

- Is there sufficient biological activity and diversity in subsurface environments to support natural and/or accelerated bioremediation of metals and radionuclides?
- What are the effects of metal and radionuclide contamination on microbial community structure and function, particularly on populations that transform radionuclides and metals? What are the effects of key physical, chemical and hydrological factors on community structure and function, as it relates to immobilization of metals and radionuclides?
- What is the role of consortial interactions in subsurface environments contaminated with radionuclides and metals? Such interactions might include competition for electron donors and acceptors, or consortial interactions in the biotransformation of metals and radionuclides.
- What is the potential importance of gene transfer in natural microbial communities at subsurface sites contaminated with radionuclides or metals?

Those studies that link structure to function of microbial communities that immobilize metals and/or radionuclides at DOE sites are especially encouraged.

Assessment: Assessment is a cross-cutting element with a goal to develop innovative methods to assess processes and endpoints in support of the NABIR Science Elements. Thus, assessment projects are being sought that support the Science Elements of Biogeochemistry, Biotransformation, and Community Dynamics/Microbial Ecology. Methods may range from molecular to field scale, but they should improve the understanding of *in situ* bioremediation processes in subsurface environments contaminated with radionuclides and metals. Priority will be given to research applications that could lead to fieldable, cost-effective, real time assessment techniques and/or instrumentation. NABIR will not fund projects that examine endpoints relating to human health risks. Research should address the development of innovative and effective methods for assessing or quantifying:

- Biogeochemical or biotransformation processes and rates, and microbial community structure and function relative to bioremediation of metals and radionuclides.
- Bioremediation end points, in particular, the concentration, speciation and stability of radionuclide and metal contaminants.

Techniques must enable NABIR science and address specific science needs of the program. The applicant should explain the potential impact and contribution to the NABIR program, as well as the relevance and potential usefulness of the innovation.

Integrative Studies: This solicitation especially encourages those studies that integrate research from more than one NABIR research element through laboratory and/or field research. This interdisciplinary research should focus on achieving the primary goals of the NABIR program through collaborative studies in which the experimental design integrates two or more NABIR elements. Interdisciplinary teams should include participation from two or more research areas such as microbiology, geochemistry, hydrology, environmental engineering, numerical modeling or other disciplines. Partnering with specific field experiments may provide information for hypothesis testing. Such integrative studies might include, for example:

- Employing numerical modeling to integrate information from more than one element, such as Biogeochemistry, Biotransformation, and Community Dynamics and Microbial Ecology, to better predict *in situ* immobilization of metals and radionuclides.
- Studies of the effects of key physical, geochemical and hydrological parameters on the structure and function of subsurface microbial communities engaged in metal/radionuclide biotransformation and immobilization.
- Integration of new methods in the Assessment element with actual application to studies of biotransformation or biogeochemistry of radionuclide/metal reduction and precipitation.
- Linking chemical speciation of radionuclides and metals in subsurface environments to the bioavailability of those contaminants to microorganisms.
- Studies on the changes of subsurface microbial community structure and function, and the effect on net rates of biotransformation during biostimulation experiments.

Field Scale Bioremediation Experiments

Although bioremediation of radionuclides and metals has been studied in the laboratory, and bioremediation technologies have been demonstrated in the field, there are few examples of carefully controlled, hypothesis-driven, in situ bioremediation research at the field-scale. The FRC provides opportunities for such field-scale experiments.

The S–3 Ponds were the primary source of contamination detected in the contaminated zone of the FRC. The S–3 Ponds consisted of four unlined ponds constructed in 1951 on the west end of the Y–12 Plant at Oak Ridge. Liquid wastes, composed primarily of nitric acid plating wastes containing nitrate and various radionuclides and metals (*e.g.*, uranium and technetium), were disposed in the ponds until 1983. Waste disposal activities at the Y–12 Plant created a mixed waste plume of contamination in the underlying unconsolidated residuum (primarily saprolite and fill) and shale bedrock. The ponds were neutralized and denitrified in 1984, and capped in 1988, and the area is now a parking lot.

Three areas in the contaminated zone are currently identified as the primary targets for in situ studies. Areas 1 and 3 are located adjacent and directly south and west, respectively, of the S–3 Ponds parking lot and Area 2 is located several hundred feet to the southwest of the parking lot. Applicants may choose to propose research for Area 1 (a high nitrate, low pH site), Area 2 (a low nitrate, circumneutral site) or Area 3 (a very high contaminant concentration, very low pH site). More detailed information on Areas 1, 2 and 3 can be found on the NABIR FRC Web site

(*http://public.ornl.gov/nabirfrc/area123.cfm*).

The initial focus of in situ research conducted at the FRC has been on biostimulation experiments to understand or promote the immobilization of uranium and technetium by microbial processes. Understanding natural and stimulated uranium biotransformation in the presence of high nitrate and low pH in unconsolidated residuum and fractured rock is one of the biggest challenges at the FRC at Oak Ridge, and at other DOE sites. The NABIR program is currently funding the following three in situ projects within the contaminated area of the FRC: (1) A stimulated biocurtain for uranium biotransformation combined with denitification; (2) push-pull tests to determine the kinetics of electron-acceptor and electron-donor use for microbially-mediated uranium and technetium reduction and reoxidation; and (3) stimulation of microbial uranium reduction in hydrologically-accessible fractured zones to precipitate uranium oxide and isolate the uranium in low-permeability porous regions. Applicants should attempt to complement existing projects; additional information can be found at *http://public.ornl.gov/nabirfrc/awards.cfm.*

For this solicitation, the NABIR program is seeking applications that focus on in situ studies that are aligned with the short- and mid-term scientific tasks outlined in the recently completed strategic plan for the FRC (*http://public.ornl.gov/nabirfrc/FRCStrategicPlan070103.pdf*). Applications should therefore focus on field conditions or processes that affect microbial oxidation/reduction and contaminant transport at the meter or tens of meters scale. The results of in situ research should lead to improved parameters for modeling the fate and transport of uranium, technetium or other contaminants. For example, research could be undertaken on microbial metal reduction in the presence of preferential contaminant flow pathways in the saprolite or in reworked fill, during storm events, in the vadose zone, at increasing distance from the source, or at the seasonally variable capillary fringe. Research findings are expected to be useful for incorporation into a site-wide FRC model for reactive transport and groundwater flow.

Applicants must propose a testable hypothesis that is based on microbially-mediated mechanisms of immobilization for in situ field research, and they should describe a detailed technical approach that should include: (1) Establishing a defined (surface area and depth) experimental and control plot within the proposed contaminated field site; and (2) manipulating the experimental plot by amendments of nutrients or other chemicals that might stimulate microbial communities to immobilize uranium or technetium. The technical approach must be described in phases such that completion of each phase could result in publishable results. A statistically robust sampling regimen to determine the efficacy of the manipulation should also be described. Moreover, the applicant must explain the technical feasibility of performing the proposed field research. Technology demonstration projects will not be funded by this solicitation.

The applicants must propose research to be performed as an interdisciplinary team including, at a minimum, expertise in microbiology, geochemistry, and hydrology. The Principal Investigator for the team must have prior experience in relevant field research, and the activities of each team member must be clearly defined. Multi-institutional partnerships are strongly encouraged; for example, applicants may draw expertise from National Laboratories, academia, and other institutions engaged in basic research. The successful team must be willing to partner with other funded NABIR investigators who may wish to obtain samples in conjunction with the proposed field studies.

Although compliance with National Environmental Policy Act (NEPA) is the responsibility of DOE, successful applicants who propose to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation. Successful applicants will also be expected to brief and to obtain approval of their written work plan from the Field Research Review Panel (FRRP) prior to beginning their field work. For this solicitation, applicants should describe how they would communicate their proposed experimental design and their results to stakeholders, regulators, and community groups. Applicants may wish to review the FRC Communication Plan, which can be found on the FRC web site. All applicants should discuss other relevant societal issues, where appropriate, which may include intellectual property protection, and communication with and outreach to affected communities (including members of affected minority communities where appropriate) to explain the proposed research. For further information on NABIR Field Research, please contact Mr. Paul Bayer (*Paul.Bayer@science.doe.gov*), the NABIR Field Activities Manager.

Additional Information for Applications

Long Term Environmental Remediation Goals

The following indicators establish specific long term goals in Scientific Advancement that the BER program is committed to, and against which progress can be measured.

Environmental Remediation: Develop science-based solutions for cleanup and long-term monitoring of DOE contaminated sites. By 2013, a significant fraction of DOE's long-term stewardship sites will employ advanced biology-based clean up solutions and science-based monitors.

All grant proposals should address one or more of these measures and/or explain how the proposed research supports the broad scientific objectives outlined above. More information on the program and the scientific research it supports can be found at our Web site: *http://www.sc.doe.gov/ober/.*

Preapplications

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the institution, Principal Investigator name, address, telephone, fax and E-mail address, and title of the project. The preapplication should consist of one or two pages of narrative describing the research objectives and methods. These will be reviewed for responsiveness to the scope and research needs described in this notice. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Program Funding

It is anticipated that up to $3 million will be available for multiple awards to be made in late Fiscal Year 2004, and early Fiscal Year 2005, in the categories described above, contingent on availability of appropriated funds. An additional sum, up to $3 million, will be available for competition by DOE National Laboratories under a separate solicitation (LAB 04–06). Applications may request project support up to three years, with out-year support contingent on availability of funds, progress of the research and programmatic needs. Annual budgets for Biogeochemistry, Biotransformation or Community Dynamic projects are expected to range from $100,000 to $300,000 total costs. Annual budgets for integrative studies involving participants representing

more than one research element may range up to $450,000. Annual budgets for interdisciplinary field research projects at the FRC are expected to range from $300,000 to $1,000,000 for total costs. Costs for drilling at the FRC should not be included in the applicant's budget. All applications should include letters of agreement to collaborate from potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded. DOE may encourage collaboration among prospective investigators to promote joint applications or joint research projects by using information obtained through the preliminary applications or through other forms of communication. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

For renewals, progress on previous NABIR funded research will be an important criterion for evaluation. As part of the evaluation, program policy factors also become a selection priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Federal and non-federal reviewers will be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.*

In addition, for this notice, the research description must be 20 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). *Applicants who have had prior NABIR support must include a Progress Section with a brief description of results and a list of publications derived from that funding.* Attachments should include short (2 pages) curriculum vitae, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of the National Institutes of Health (NIH) or the National Science Foundation (NSF) (two to three pages).

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the NIH ''Guidelines for Research Involving Recombinant DNA Molecules,'' which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf,* (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

Grantees must also comply with other federal and state laws and regulations as appropriate; for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation.

Additional information on the NABIR program is available at the following Web site: *http://www.lbl.gov/NABIR/.* For researchers who do not have access to the World Wide Web, please contact Karen Carlson; Environmental Sciences Division; SC–74, Germantown Building; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585–1290; phone: (301) 903–3338; fax: (301) 903–8519; E-mail: *karen.carlson@science.doe.gov;* for hard copies of background material mentioned in this solicitation.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on December 12, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–31331 Filed 12–18–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, January 15, 2004; 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer (DDFO), Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 210–2215.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m. Informal Discussion
6:00 p.m. Call to Order; Introductions; Approve November Minutes; Review Agenda
6:05 p.m. DDFO's Comments
6:25 p.m. Ex-officio Comments
6:35 p.m. Federal Coordinator Comments
6:45 p.m. Public Comments and Questions
6:55 p.m. Break
7:05 p.m. Task Forces/Presentations
- Waste Operations Task Force
- Water Task Force
—C–400 Proposed Plan (discussion only)
- Long Range Strategy/Stewardship
—DUF_6

8:05 p.m. Public Comments and Questions
8:15 p.m. Administrative Issues
- Review of Work Plan
- Review of Next Agenda

8:35 p.m. Review of Action Items
8:50 p.m. Task Force and Subcommittee Reports
- Community Concerns
- Public Involvement/Membership
- Executive Committee

9:15 p.m. Final Comments
9:30 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on December 15, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–31333 Filed 12–18–03; 8:45 am]

BILLING CODE 6450–01–P

Environmental Protection Agency

[ER–FRL–6646–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

Draft EISs

ERP No. D–AFS–J65392–MT Rating EC2, Helena National Forest Noxious Weed Treatment Project, Implementation, Lewis and Clark, Powell, Jefferson, Broadwater and Meagher Counties, MT.

Summary: EPA supports integrated weed management to control noxious weeds. However, EPA expressed environmental concerns regarding adequate protection measures to reduce herbicide transport to surface and ground water and to protect public health. The final EIS should address those issues and include monitoring in selected watersheds.

ERP No. D–AFS–J65394–MT Rating EC2, Basin Creek and Blacktail Hazardous Watershed Fuels Reduction Project, Implementation, Highland Mountains, Butte Ranger District, Beaverhead-Deerlodge National Forest, Butte-Silver Bow County, MT.

Summary: EPA supports the need to reduce hazardous fuels and firerisk and protect the Basin Creek Municipal watershed for the City of Butte. However, EPA expressed environmental concerns with potential adverse impacts to threatened lynx.

ERP No. D–AFS–L65433–OR Rating EC2, North Fork Burnt River Mining Project, Proposal for Mineral Plans of Operation, Implementation, Wallowa-Whitman National Forest, Unity Ranger District, Whitman Unit, Blue Mountains, Town of Unity, Baker County, OR.

Summary: EPA expressed environmental concerns regarding impacts from the proposed action on water quality. Mining activities may contribute to increased temperature and sediment on 303(d) listed streams and may result in additional impaired water bodies. EPA recommends that the EIS explain how water quality will be protected and improved. Also, the Plan of Operation should be amended to include any future Total Maximum Daily Load requirements if applicable.

ERP No. D–AFS–L65439–OR Rating EC2, Monument Fire Recovery Project, Whitman Unit—Wallowa—Whitman National Forest (WWNF) Timber Harvest of Fire Killed/Dying Trees, Reforestation, Recovery of Herbaceous, Native Vegetation and Maintenance or Improvement of Water Quality, Implementation, Baker County, OR.

Summary: EPA expressed environmental concerns with potential adverse impacts to water quality and suggests the Final EIS include mitigation measures and identify water quality limited waterbodies in the project area. EPA also expressed concerns with adverse impacts to habitat for primary cavity excavator bird species from harvest activities.

ERP No. D–BLM–L65422–00 Rating EO2, Upper Klamath River Management Plan, Resource Management Plan Amendments, Implementation, Upper Klamath River stretch between Lake Ewauna, OR, south to Irongate Dam in CA.

Summary: EPA expressed environmental objections with alternatives that will not meet water quality standards, and may adversely impact threatened and endangered species. The final EIS should fully disclose impacts to wetlands, provide additional information on consultation with Native American tribes and fully assess potential environmental justice impacts. EPA requested that the final evaluate an alternative that meets water quality standards.

ERP No. D–FHW–F40417–WI Rating EC2, WI–83 Highway Improvements, County NN in Mukwonago to WI–16 in Hartland, Funding and U.S. Army COE Section 404 Permit Issuance, Waukesha County, WI.

Summary: EPA has identified environmental concerns with the proposed project relating to impacts on trout habitat, Scuppernong Creek, Blanding's Turtle and air quality. EPA is also concerned about the adequacy of the information in the DEIS regarding wetlands.

ERP No. D–NOA–E91014–00 Rating EC2, Generic Essential Fish Habitat Amendment to the Fishery Management Plans of the Gulf of Mexico (GOM) for Shrimp, Red Drum, Reef Fish, Stone Crab, Coral and Coral Reef, Spiny Lobster Fisheries of the GOM and South Atlantic Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic.

Summary: EPA expressed environmental concern that the preferred alternative did not protect regions which comprise the bulk of the EFH habitats within the 100 fathom isobath. EPA believes that the proposed action would be substantially improved if marine protected areas, habitat/reef creation and rotational strategies were considered as EFH management measures.

ERP No. D–USN–K11112–CA Rating EC2, Tertiary Treatment Plant and Associated Facilities Construction and Operation, Implementation, Marine Corps Base Camp Pendleton, San Diego County, CA.

Summary: EPA raised environmental concerns that the Proposed Action did not incorporate ground water recharge or reuse/treatment wetland components, which could benefit the Santa Margarita River and its riparian ecosystem. EPA raised concerns that potentially feasible mitigation may not be presented because impacts are not significant, and that no mitigation is proposed for solid waste generated by the project, including demolition waste. EPA requested a discussion of whether polychlorinated biphenyls (PCBs) are present in materials at sewage treatment plants proposed for demolition.

ERP No. DB–NOA–B91021–00 Rating EC1, Northeast Multispecies Fishery Management Plan, Amendment 13, New Information concerning Management Alternatives and Impact Analysis, Adoption, Approval and Implementation, New England Management Council, ME, HH, VT, MA, RI, CT, NY, NJ, DE, MD, VA and NC.

Summary: EPA had environmental concerns that the document lacks information regarding alternatives selection and recommended additional information on possible essential fish habitat area closures.

ERP No. DF–NOA–L64015–AK Rating EC1, Programmatic EIS—Alaska Groundfish Fisheries, New Information concerning the Ecosystem and a Preferred Alternative, Fishery Management Plans for the Groundfish Fishery of the Gulf of Alaska and the Groundfish of the Bering Sea and Aleutian Islands Area, North Pacific Fishery Management Council, AK.

Summary: EPA expressed concerns regarding impacts to essential fish habitat and Steller sea lions and the need for clarification on the relationship between Magnuson-Stevens Act, the Fisheries Council and NEPA.

ERP No. D1–AFS–E65031–KY Rating EC1, Gray Mountain Coal Lease Land Use Analysis, Application for Leasing Tracts 3094Bb, 3049Be and 3049Az, Daniel Boone National Forest, Leslie County, KY.

Summary: EPA has environmental concerns with potential adverse impacts to water quality from the proposed coal lease, and other connected actions related to mining activities such as subsidence, erosion and sedimentation.

Final EISs

ERP No. F–AFS–K65255–CA Spalding Land Exchange Project, Proposed Land Exchange between Spalding Community Service District (SCSD) and Lassen National Forest (LNF), Special Use Permit, Lassen County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NOA–E91009–00 Dolphin and Wahoo Fishery Management Plan, Establishing Fishery Management Units, Stock Status Determination and Harvesting Restrictions, Initial Regulatory Flexibility Analysis, South Atlantic, Caribbean, and Gulf of Mexico.

Summary: While EPA has no objection to this proposed action, EPA believes the future NOAA EISs should further streamline the NEPA process in areas such as alternatives and the referencing of modifications to the draft EIS.

Dated: December 16, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–31352 Filed 12–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6646–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.* Weekly receipt of Environmental Impact Statements filed December 8, 2003, through December 12, 2003, pursuant to 40 CFR 1506.9.

EIS No. 030554, Final EIS, AFS, CA, Interface Recreation Trails Project, recreation route system development, implementation, Stanislaus National Forest, Calaveras Ranger District, Calaveras County, CA, due: January 20, 2004, contact: Robert W. Griffith (209) 795–1381.

EIS No. 030555, Final EIS, NPS, MA, Boston Harbor Islands National Recreation Area, implementation, general management plan, Boston, MA, due: January 20, 2004, contact: George E. Price, Jr. (617) 223–8666.

This document is available on the Internet at: *http://www.nps.gov/boha/pphtml/documents.html.*

EIS No. 030556, Draft EIS, USN, WA, Fox Island Laboratory Stabilization of In-Water Facilities, Naval Surface Warfare Center, Carderock Division, Pierce County, WA, due: February 2, 2004, contact: Kimberly Kler (360) 396–0927.

EIS No. 030557, Final EIS, FHW, TX, TX–45 Highway Southeast Study, I–35 south at Farm-to-Market Road-1327 to TX–130/US 183, local regional enhancements to the national transportation systems, funding and right-of-way permit issuance, Travis County, TX, due: January 20, 2004, contact: Salvador Decampo (512) 536–5950.

EIS No. 030558, Draft EIS, FHW, MN, MN–371 North Improvement Project, reconstruction from intersection of Crow Wing County Road 18 in Nisswa to the intersection of Cass County Road 42 in Pine River, NPDES Permit and U.S. Army COE Section 404 Permit, Crow Wing and Cass Counties, MN, due: February 9, 2004, contact: Cheryl Martin (651) 291–6120.

EIS No. 030559, Draft EIS, COE, AZ, EL Rio Antiguo Feasibility Study, Ecosystem Restoration along the Rillito River, Pima County, AZ, due: February 2, 2004, contact: John Moeur (213) 452–4219.

EIS No. 030560, Draft Supplement, COE, FL, Central and Southern Florida Project, Indian River Lagoon—south feasibility study, to address the requirement of section 601 of the Water Resources Development Act 2000 and three additional alternatives, Martin, St. Lucie and Okeechobee Counties, FL, due: February 2, 2004, contact: Mike Rogalski (904) 232–1460.

EIS No. 030561, Draft EIS, AFS, OR, Eyerly Fire Salvage Project, burned and damage trees salvage, reforestation and fuels treatment, Implementation, Deschutes National Forest, Sisters Ranger District, Jefferson County, OR, Due: February 2, 2004, contact: Dave Owens (541) 416–6425.

This document is available on the Internet at: *http://www.fs.fed.us/r6/centraloregon/projects/units/sisters//eyerly-eis.shtml.*

EIS No. 030562, Draft EIS, AFS, UT, Bear Hodges II Timber Sale Management Plan, selective timber harvest of spruce stands with or without road construction, implementation, Wasatch National Forest (WCNF), Logan Ranger District, Cache and Rich Counties, UT, due: February 2, 2004, contact: Thomas Tidwell (801) 524–3900.

EIS No. 030563, Draft EIS, NPS, SC, FL, NC, GA, Low Country Gullah Culture Special Resource Study, Gullah culture preservation and protection analysis to consider the suitability and feasibility for inclusion in the National Park Service System, SC, NC, GA and FL, due: February 2, 2004, contact: John Barrett (Ext. 637) (404) 512–3124.

EIS No. 030564, Draft EIS, FHW, TX, Kelly Parkway Project, construction from U.S. 90 to TX–16, to improvement transportation mobility, facilitate economic development, and

enhance safety, funding and U.S. Army COE Section 404 Permit, San Antonio, Bexar County, TX, due: February 2, 2004, contact: Salvador Deocampo (512) 536–5950.

EIS No. 030565, Final EIS, NOA, WA, CA, OR, Pacific Coast Groundfish Fishery Management Plan (FMP) Amendment 16–2, rebuilding plans for: darkblotched rockfish, Pacific Ocean perch, canary rockfish, and lingcod, maximum sustainable yield (MSY) Magnuson-Stevens Fishery Conservation and Management Act, WA, OR, CA and Boundary of U.S. EEZ, due: January 20, 2004, contact: Robert Lohn (206) 516–6150.

EIS No. 030566, Final Supplement, NRC, SC, Generic EIS—license renewal of nuclear plants, supplement 13 regarding H.B. Robinsion Steam Electric Plant, Unit No. 2, operating license renewal for 20 years, site specific, on the shore of Lake Robinsion, Darlington and Chesterfield Counties, SC, due: January 20, 2004, contact: Richard L. Emch, Jr. (301) 415–1590.

Amended Notices

EIS No. 030514, Draft EIS, FHW, IL, Macomb Area Study, construction from U.S. Route 67 (FAP–310) and Illinois Route 336 (FAP–315), City of Macomb, McDonough County, IL, due: January 13, 2004, contact: Norman R. Stoner (217) 492–4640. Revision of **Federal Register** notice published on 11/14/2003: correction to comment period from 12–29–2003 to 01–13–2004.

EIS No. 030525, Draft EIS, AFS, OR, Biscuit Fire Recovery Project, improve firefighter safety, reduce the risk of high-intensity, stand replace fire public and private managed lands, Siskiyou National Forest, Rogue River, Josephine and Curry Counties, OR, due: january 20, 2004, contact: Tom Link (541) 471–6500.

Revision of **Federal Register** notice published on 11/21/03: CEQ comment period ending 01/05/2004 has been extended to 01/20/2004.

EIS No. 030537, Final EIS, BLM, AK, Northwest National Petroleum Reserve-Alaska (NPR–A) integrated plan, multiple-use management of 8.8 million acres, lands within the North Slope Borough, AK, due: January 20, 2004, contact: Curtis Wilson (907) 271–5546. Revision of **Federal Register** notice published on 11/28/2003: CEQ wait period ending on 12/29/2003 has been extended to 1/20/2004.

EIS No. 030546, Draft EIS, AFS, PA, Sugar Run Project Area (SRPA), to achieve and maintain the desired conditions as stated in forest plan, Allgeheny National Forest, Bradford Ranger District, McKean County, PA, due: January 26, 2004, contact: Heather Whittier (814) 362–4613 Ext. 142.

Revision of **Federal Register** notice published on 12/12/2003: correction to telephone number.

Dated: December 16, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–31353 Filed 12–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7600–3]

Preliminary National Enforcement and Compliance Assurance Priorities for Fiscal Years 2005, 2006 and 2007; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The U.S. Environmental Protection Agency published a notice in the **Federal Register** on December 10, 2003, concerning a request for comments on Preliminary National Enforcement and Compliance Assurance Priorities for Fiscal Years 2005, 2006 and 2007. The notice contained an incorrect phone number.

FOR FURTHER INFORMATION CONTACT: Robert Tolpa, (202) 564–2337.

Correction:

In the **Federal Register** of December 10, 2003, in FR Doc. OECA–2003–0154, on page 68896, in the last paragraph of the notice, correct the ''Phone number'' caption to read:

Review Information: Persons interested in obtaining further background information regarding current or proposed FY 2005–2007 national enforcement and compliance assurance priorities may submit a request for hard copy or electronic version of information to: *docket.oeca@epa.gov,* or contact the docket clerk at 202–566–1752. Please reference Docket Number OECA–2003–0154 in the request. A reasonable fee may be charged by EPA for copying docket materials. Dated: December 4, 2003.

Dated: December 11, 2003.

Lisa C. Lund,

Acting Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–31350 Filed 12–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the fourth meeting of the Technological Advisory Council (''Council'') under its charter renewed as of November 25, 2002. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: January 23, 2004 beginning at 10 a.m. and concluding at 3 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, (202) 418–1096.

SUPPLEMENTARY INFORMATION: Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from different areas such as manufacturing, academia, communications services providers, the research community, etc., can provide advice to the FCC on innovation in the communications industry.

Purpose: The purpose of the Technological Advisory Council is to provide technical advice and to make recommendations on the current issues and questions presented to it by the FCC.

Agenda: Technological Advisory Council (TAC) III—Fourth Meeting:

9 a.m.—Informal meet-and-greet for members

10 a.m.—Public Meeting:

3 pm—Wrap Up—Meeting Adjourned.

Closer to the meeting date, a more detailed agenda will be available on the Federal Communications Commission's Web page at *http://www.fcc.gov*

Members of the public may attend the meeting. The Federal Communications

Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is *Jeffery.Goldthorp@fcc.gov.* Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7–A325, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31257 Filed 12–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Don Crader Revocable Trust, and Don Crader as trustee, both of Marble Hill, Missouri; to acquire additional voting shares of First Southeast Missouri Bancorporation, Inc., Scott City, Missouri, and thereby indirectlty acquire additional shares of Security Bank and Trust Company, Scott City, Missouri.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Joseph L. and Loraine P. Durler, both of Syracuse, Kansas; to acquire additional voting shares of Valley Bancorp. Inc., Syracuse, Kansas, and thereby indirectly acquire additional voting shares of The Valley State Bank, Syracuse, Kansas.

2. Landon N. and Georgia K. Westbrook, both of Purcell, Oklahoma; to acquire additional voting shares of Exchange Bancshares of Moore, Inc., Moore, Oklahoma, and thereby indirectly acquire additional voting shares of Exchange National Bank of Moore, Moore, Oklahoma.

Board of Governors of the Federal Reserve System, December 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00593 Filed 12–18–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; AoA Uniform Project Description

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the AoA Uniform Project Description.

DATES: Submit written or electronic comments on the collection of information by February 17, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *Melanie.Starns@AoA.gov.* Submit written comments on the collection of information to Center for Planning and Policy Development, Administration on Aging, Attention: UPD Comments, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Melanie K. Starns at (202) 357–3464.

SUPPLEMENTARY INFORMATION: Under the PRA (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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA'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 respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology. The collection of applicants' project description and budget justification information is necessary to issue AoA discretionary grants. The information is used to evaluate if applications are eligible for funding, and further used during the grant review process. The respondents are organizations that choose to apply for an AoA discretionary grant. AoA estimates the burden of this collection of information as follows: 500 responses/year; 5,000 hours/year.

Dated: December 16, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–31269 Filed 12–18–03; 8:45 am]

BILLING CODE 4154–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Workplace Exacerbation of Asthma (OMB No. 0920–0495)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Work-related asthma is the most common lung disease seen in occupational health clinics in the United States based on data from the Association of Occupational and Environmental Clinics for 1991–1996. Work-related asthma includes both new onset asthma initiated by workplace exposures and pre-existing asthma exacerbated by workplace environments, in both types of cases repeated exposure to asthmatic agents can lead to chronic pulmonary impairment. The 1985 American Thoracic Society statement ''What Constitutes an Adverse Health Effect of Air Pollution'' identified exacerbation of asthma as one of the serious effects of environmental air pollution. While anecdotal evidence suggests that as many as one-half of work-related asthma patients treated in occupational medicine clinics had pre-existing asthma that was exacerbated by workplace conditions, there are few data from studies in the United States to support this claim.

Three years ago, NIOSH requested approval from OMB to conduct a three phase study. In Phase 1 (Baseline Study), a telephone interview was conducted to address three specific aims: (1) To determine the frequency of workplace exacerbation of asthma (WEA); (2) to determine the circumstances at work associated with exacerbation of asthma; and (3) to determine the social and economic costs associated with workplace exacerbation of asthma. To date, the Baseline Study telephone interviews have been completed for a total of 615 participants. Also, patient care records have been obtained in order to ascertain cost of care for asthma for each participant (Specific Aim 3).

Phase 2 (Validation Phase) is being conducted with a subset of respondents from the Baseline Study. Employed respondents with and without workplace exacerbation are being asked to conduct serial spirometry with a portable device. These findings will serve as the ''gold standard'' to determine the sensitivity and specificity of a self-report of workplace exacerbation of asthma (Specific Aim #4). As part of the serial testing, respondents complete a diary and final brief telephone interview at the end of the serial testing. Data collection for Phase 2 continues. The Paperwork Reduction Act does not apply to Phase 2 of the study.

In Phase 3 (Follow-up Study), all respondents from the Baseline Study will be asked to complete a follow-up telephone interview approximately two years later to investigate whether workplace exacerbation at baseline predicts an increase in asthma severity (Specific Aim #5). We anticipate that interviewing for Phase 3 will continue through August, 2004.

The data collected in this study will be used to further understand the frequency of workplace-exacerbated asthma, the social and economic impacts of this problem, and the implication of self-reporting WEA for subsequent asthma severity. This information can be used to prioritize resources for addressing this problem. The data collected in this study will also identify which jobs and exposures are likely to exacerbate existing asthma, thus providing guidance on where to focus preventive efforts. Collected data on the validity of self-reporting WEA will be useful to both clinicians and researchers who attempt to treat or study individuals with this problem. The annualized burden for this data collection is 214 hours.

Respondents	Number of respondents	Number of responses per respondent	Average Burden per Response (in hours)
Validation Study*	(200)	(1)	(7.5)
Follow-up Study: Attempt to conduct an interview	465	1	5/60
Follow-up Study: Completed interviews	349	1	30/60

*The Paperwork Reduction Act does not apply to the Validation Study.

Dated: December 11, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31306 Filed 12–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Families, Communities, and Diabetes Management Project—New—National Center for Chronic Disease Prevention

and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Diabetes Mellitus Type 2 is a chronic metabolic disease that has the potential for serious health consequences which include both psychological and physical conditions. Effective management of this disease is important to prevent the development of these problems. No previous studies have systematically examined the ways in which psychological functioning, patient-provider relationships, family and social support, health insurance availability and utilization, lifestyle practices, and community support influence diabetes self-management among African American patients. Most diabetes management information is based on research conducted primarily with Caucasian patients. The Division of Diabetes Translation within the National Center for Chronic Disease Prevention and Health Promotion of the Centers for Disease Control and Prevention plans to conduct a pilot study of a longitudinal, family-centered research project to determine optimal ways of teaching African American patients and their families how to work together to manage diabetes successfully.

The research will involve samples of 40-to 64-year-old African American men and women with Type 2 diabetes and their close family members. Participating families will be divided into two groups, an intervention group that will receive the intervention at the beginning of the study, and a comparison group that will receive a modified version at the end. Measurements of self-care adherence and diabetes control will include both self-reports and objective measures such as blood glucose levels obtained through clinical lab work. Other data will include diabetes knowledge, community characteristics, social support, community support, psychological functioning, patient-provider relationships, and health care coverage. Participant involvement will occur over a 13 month period.

CDC is requesting a three year approval for this data collection. The estimated annualized burden is 1,433 hours. The total burden over the course of this data collection is 4,300 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults with Diabetes:			
Questionnaires	400	3	1
Clinical Lab Work	400	3	1
Glucose Test Meter Training	400	1	1
Family Members: Questionnaires	400	3	45/60
Teenagers: Questionnaires	400	3	30/60

Dated: December 9, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31307 Filed 12–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: ''Physical Activity: The Arthritis Pain Reliever'' Campaign Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Arthritis affects nearly 43 million Americans, or about one in every six people, and is the leading cause of disability among adults in the United States. Because of the broad public health impact of this disease, the Centers for Disease Control and Prevention (CDC) developed the National Arthritis Action Plan in 1998 as a comprehensive approach to reducing the burden of arthritis on the United States. As part of its efforts to implement the National Arthritis Action Plan, CDC, National Center for Chronic Disease Prevention and Health Promotion developed a physical activity campaign, People with Arthritis (PWA). PWA targets African American and Caucasian men and women aged 45–64, high school education or less, with an annual income less than $35,000 per year. Campaign materials include print ads, 15-, 30- and 60-second radio public service announcements, and desktop displays with brochures for pharmacies, doctors' offices, and community centers. The campaign objectives are to increase target audience members' (1) beliefs about physical activity as an arthritis management strategy (there are ''things they can do'' to make arthritis better, and physical activity is an important part of arthritis management); (2) knowledge of the benefits of physical activity and appropriate physical activity for people with arthritis; (3) confidence in their ability to be physically active, and (4) trial of physical activity behaviors.

During 2002, the health communications campaign, ''Physical Activity: The Arthritis Pain Reliever'' was pilot-tested by 6 CDC-funded states. CDC plans to disseminate the health communications arthritis campaign to 38 CDC-funded states. The preliminary pilot tests focused on reach and exposure. The purpose of this evaluation is to determine if core campaign messages are reaching the target audience; and if so, how they are affecting knowledge, beliefs, confidence and behaviors of people with arthritis. CDC will use the data from this evaluation to make recommendations to state health departments and their partners on the use of this media campaign.

In this data collection, CDC proposes to conduct an evaluation using

convenience samples in three markets, including two test markets and one comparison market using a quasi-experimental design. The primary method for data collection will be a 15-minute tracking survey administered via telephone. The survey will be conducted before and after the campaign. Six months after the post campaign data collection, CDC will conduct a follow-up survey on approximately one-third of the respondents who participated in the post campaign data collection. The annualized burden for this data collection is 555 hours.

Respondents	Number of respondents	Responses per respondent	Average hours per response (in hours)
Pre-campaign	960	1	15/60
Post-campaign	960	1	15/60
Follow-up	300	1	15/60

Dated: December 11, 2003

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31308 Filed 12–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–437, 437A, 437B; CMS–255; CMS–R–199; CMS–10086]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Agency: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Psychiatric Unit Criteria Worksheet, Rehabilitation Unit Criteria Worksheet, and Rehabilitation Hospital Criteria Worksheet, and Supporting Regulations at 42 CFR 488.26; *Form No.:* CMS–437, 437A, and 437B (OMB# 0938–0358); *Use:* The rehabilitation hospital/unit and psychiatric unit criteria worksheets are necessary to verify and reverify that these facilities/units comply and remain in compliance with the exclusion criteria for the Medicare prospective payment system; *Frequency:* Annually; *Affected Public:* Business or other-for-profit, not-for-profit institutions; *Number of Respondents:* 2,610; *Total Annual Responses:* 2,610; *Total Annual Hours:* 653.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Municipal Health Services Cost Report Form and supporting Regulations 42 CFR 405.2470; *Form No.:* CMS–255 (OMB# 0938–0155); *Use:* The Municipal Health Services Program Cost Report (CMS 255) is used by the participating clinics to report costs for health care services rendered to Medicare beneficiaries. It is also used to gather data to properly evaluate the demonstration; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 14; *Total Annual Responses:* 14; *Total Annual Hours:* 476.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Report on Payables and Receivables; *Form No.:* CMS–R–199 (OMB# 0938–0697); *Use:* The Chief Financial Officers Act of 1990 requires government agencies to produce auditable financial statements. This form will collect accounting data from the States on Payables and Receivables; *Frequency:* Annually; *Affected Public:* State, local or tribal government; Number of *Respondents:* 57; *Total Annual Responses:* 57; *Total Annual Hours:* 342.

4. *Type of Information Request:* Extension of a currently approved collection; *Type of Information Collection:* Medicaid Program: Real Choice Systems Change Grants for Community Living; *CMS Form Number:* CMS–10086 (OMB# 0938–0901); *Use:* Executive Order 13217, ''Community-Based Alternatives for Individuals with Disabilities'' called upon the Federal government to assist States and localities to swiftly implement the decision of the United States Supreme Court in *Olmstead* v. *L.C.,* stating: ''The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of the United States.'' State agencies and community groups will be applying for these grants; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government; not-for-profit institutions; *Number of Respondents:* 75; *Total Annual Responses:* 150; *Total Annual Burden Hours:* 1500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 12, 2003.

Julie Brown,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–31357 Filed 12–18–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–234, CMS–250–254]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Subpart D—Private Contracts and Supporting Regulations in 42 CFR 405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, and 424.24; *Form No.:* CMS–R–234 (OMB# 0938–0730); *Use:* Section 4507 of the BBA of 1997 amended section 1802 of the Social Security Act to permit certain physicians and practitioners to opt-out of Medicare and to provide through private contracts services that would otherwise be covered by Medicare. Under such contracts the mandatory claims submission and limiting charge rules of section 1848(g) of the Act would not apply. Subpart D and the Supporting Regulations contained in 42 CFR 405.410, 405.430, 405.435, 405.440, 405.445, and 405.455, counters the effect of certain provisions of Medicare law that, absent section 4507 of BBA 1997, preclude physicians and practitioners from contracting privately with Medicare beneficiaries to pay without regard to Medicare limits; *Frequency:* Biennially; *Affected Public:* Business or other for-profit; *Number of Respondents:* 26,820; *Total Annual Responses:* 26,820; *Total Annual Hours:* 7,197.

2. *Type of Information Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Secondary Payer Information Collection and Supporting Regulations in 42 CFR 411.25, 489.2, and 489.20; *Form Number:* CMS–250 through CMS–254 (OMB# 0938–0214); *Use:* Medicare Secondary Payer (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits and refers to those situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. CMS contracts with health insuring organizations, herein referred to as intermediaries and carriers, to process Medicare claims. CMS charges its Medicare intermediaries and carriers with various tasks to detect MSP cases; develops and disseminates tools to enable them to better perform their tasks; and monitors their performance in achievement of their assigned MSP functions. Because intermediaries and carriers are also marketing health insurance products that may have liability when Medicare is secondary, the MSP provisions create the potential for conflict of interest. Recognizing this inherent conflict, CMS has taken steps to ensure that its intermediaries and carriers process claims in accordance with the MSP provisions, regardless of what other insurer is primary. These information collection requirements describe the MSP requirements and consist of the following:

1. Initial enrollment questionnaire.
2. MSP claims investigation, which consists of first claim development, trauma code development, self-reporting MSP liability development, notice to responsible third party development (411.25 notice), secondary claims development, and ''08'' development (involving claims where information cannot be obtained from the beneficiary).
3. Provider MSP development, which requires the provider to request information from the beneficiary or representative during admission and other encounters; *Frequency:* On occasion; *Affected Public:* Individuals or households, Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 134,553,682; *Total Annual Responses:* 134,553,682; *Total Annual Hours Requested:* 1,518,616.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 12, 2003.

Julie Brown,

Acting, Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–31358 Filed 12–18–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement

Funding Opportunity Title: Office of Child Support Enforcement's Special Improvement Project (SIP) Grants.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OCSE–SIP–0001.

CFDA Number: 93.601.

Due Date for Applications: March 3, 2004.

SUMMARY: The Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE) invites eligible applicants to submit competitive grant applications for special improvement projects which further the national child support mission, vision, and goals which are: All children to have parentage

established; all children in IV–D cases to have financial and medical orders; and all children in IV—D cases to receive financial and medical support. For FY 2004, we are looking for projects in which a variety of partners, which may include community and faith-based organizations, collaborate as appropriate. Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcomes of the competition and the availability of funds. For FY 2004, approximately $1.5 million is available for all priority areas. A non-Federal match is not required. The anticipated start date for the new awards is May 1, 2004; projects may go through September 30, 2005, for a period of up to 17 months.

I. Funding Opportunity Description

Legislative Authority. Section 452(j) of the Social Security Act, 42 U.S.C. 652(j), provides Federal funds for information dissemination and technical assistance to States, and training of Federal and State staff to improve child support programs and research and demonstration programs and special projects of regional or national significance relating to the operation of State child support enforcement programs.

Program Purpose and Objectives. To fund a number of special improvement projects which further the national child support mission to ensure that all children receive financial and medical support from their parents and which strengthens the ability of the nation's child support program to collect support on behalf of children and families. For FY 2004, we are looking for innovative projects to improve child support program performance and in which new partners collaborate so we can produce greater impacts on child support outcomes (*e.g.*, increasing the establishment of child support orders and child support collections). We invite partnerships, such as courts/tribunals and community- and faith-based organizations, that can address the needs of harder-to-serve populations, such as low-income non-custodial fathers and culturally diverse populations to apply for these projects.

Applicants should understand that OCSE will not award grants for special improvement projects which (a) Duplicate automated data processing and information retrieval system requirements/enhancements and associated tasks which are specified in the Social Security Act; or (b) which cover costs for routine activities which would normally be reimbursed under the Child Support Program (*e.g.* adding staff positions to perform routine CSE tasks), or by other Federal funding sources. Proposals and their accompanying budgets will be reviewed from this perspective.

Priority Areas:

Priority Area 1: Improving the Judicial/Administrative Processing of Child Support Enforcement Case Activities

OCSE is looking for projects that would expedite and facilitate courts'/tribunals' processing of child support case actions. In many states, courts/tribunals play a key role in establishing, modifying, or enforcing child support orders. In these jurisdictions, courts/tribunals may find that current rules, practices, or procedures create obstacles to more timely and equitable processing of child support cases. For example, courts/tribunals may require the physical presence of the parents at hearings; may accept only an official employer/corporate verification of earnings statements as evidence of income; or require a formal hearing or otherwise impose procedural obstacles to allowing deviations from guidelines to determine support orders. Under this solicitation, we are looking for projects that would address at least one of the following design elements:

- Design and implement new practices or procedures that enable courts/tribunals to remove barriers to participation in Title IV–D child support proceedings such as requiring the physical presence of the parents at hearings and other legal proceedings. Projects would demonstrate the effectiveness of using more flexible approaches, such as allowing telephone or videoconference hearings when it is difficult for a parent to personally attend a hearing due to distance, health, or other reasons. Projects might show how courts/tribunals can overcome legal and other obstacles to holding telephone hearings, using facsimile machines to transmit evidence, *etc.,* and how other jurisdictions can adapt similar procedures. Possible outcomes include improved customer service; timelier case processing; reduction in continuances, default orders, and use of imputed income; increased collections; and reduction in arrears, especially in interstate cases.
- Develop and implement procedures that could demonstrate the effectiveness of courts' use of Federal or State-certified information from the Federal or State Parent Locator Services (FPLS/SPLS) in Title IV–D cases, including New Hire information, to establish or modify child support orders. These projects would show how courts/tribunals that allow use of SPLS/FPLS data certified by a child support agency, rather than by an employer, overcome evidentiary or other obstacles to the use of such data. The projects should be designed to assist courts/tribunals or other relevant decision makers to develop and/or implement changes necessary to promote the effective and efficient use of FPLS/SPLS information in the establishment or modification of orders. The projects should show how removing obstacles, such as the requirement of employer/corporate verification of earnings, would lead to improved program performance or customer service, including expedited establishment/modification of child support orders; increased number of orders established; reduced use of imputed income; decreased accrual of arrears; increased collections; and/or increased cost-effectiveness.
- Develop and implement revised criteria, as established by the State, and guidance allowing judicial or administrative personnel greater authority to deviate from State child support order guidelines without a hearing. Projects would demonstrate the benefits of having greater discretionary guidance in this area. For example, such discretion may be warranted when application of the guidelines is considered unjust or inappropriate, such as in cases involving excessive health care costs, child care or education costs or multiple non-custodial parent families. These projects should be designed to assist other jurisdictions to adapt similar discretionary guidance and categories and to show that providing this type of discretion would improve program performance or customer service, including expedited case processing, increased collections, reduction of arrears and/or increased cost-effectiveness. Proposals must be consistent with section 467 of the Social Security Act which governs the application of State child support guidelines.

Funding: A total $200,000 is anticipated to be available for projects in this priority area and OCSE anticipates funding two grants of approximately $100,000 each.

Budget Period: For Priority Area 1, the budget period will be up to 17 months.

Priority Area 2: Educating Public on Parental Responsibilities and Promoting Healthy Marriage

The purpose of this solicitation is to educate the public about child support enforcement tools and parental obligations with the aim of increasing paternity establishment, child support

payment, or healthy marriages for unwed parents, reducing out-of wedlock births for older teens and young adults who are not parents. We are looking for projects which educate the public on their parental responsibilities and about strictly enforced child support enforcement policies if they have a child outside of marriage or if they separate or divorce. Since many States have already developed outreach videos or materials, we are not looking for projects to develop these tools. Projects would use child support workers to educate low-income, unwed parents, or older teens and young adults who are not parents, about child support enforcement policies and parental financial responsibilities when a child is born outside of marriage or a marriage breaks up. Research also generally suggests that strong child support enforcement encourages families to form, stay together, or avoid conceiving a child out of wedlock. In addition, many unwed parents, especially at the time of their child's birth may be thinking about the possibility of marriage. However, they may lack knowledge about and understanding of the importance of child support, family stability, and healthy marriage in the lives of their children. OCSE envisions that child support workers would provide information to unwed couples at pre-natal clinics, hospitals, faith-based and community-based organizations, etc. Projects might also coordinate with schools, community-based and faith-based organizations where older teens and young adults congregate in the community. The presentations would cover current automated enforcement tools such as automated wage withholding, tax offset, and driver's license suspension, to enhance the public's understanding of current child support enforcement mechanisms as well as the financial and emotional impact of having children outside of marriage. We expect that people hearing about the child support enforcement program from the workers who have first-hand knowledge of parents' child support concerns should help reinforce for parents who may be considering marriage, the benefits of healthy marriage, or help persuade others not to conceive children outside of marriage.

Funding: A total $200,000 is anticipated to be available for projects in this priority area and OCSE anticipates funding two grants of approximately $100,000 each.

Budget Period: For Priority Area 2, the budget period will be up to 17 months.

Priority Area 3: Encouraging More Timely and Appropriate Order Modifications

Projects would develop guidelines/procedures for modifying child support orders in a more timely and efficient manner. Under section 467 of the Social Security Act, states must review orders every three years at the request of either parent, or at the request of the state child support agency. In addition to using cost-of-living adjustments (COLA) that alter orders periodically without reviews, States can also use automated methods to identify orders eligible for review and to apply the appropriate adjustments to the orders.

In 1997, OCSE funded a research and demonstration grant to the State of Alaska Department of Revenue Child Support Enforcement Division (CSED) to develop and test a more efficient method of reviewing and adjusting child support award amounts. The project, ''Alaska: Review and Adjustment of Child Support Order Amounts: Evaluation of Electronic Modification (ELMO),'' used income information from automated sources, such as the National Directory of New Hires (NDNH), linked electronically to its child support system to review child support orders annually. Promising results from this project include an increased number of reviews, more timely reviews, and modifications which more accurately reflect the noncustodial parents' ability to pay.

Under this solicitation, OCSE is looking for additional demonstration projects which States can conduct under current State law. These projects would demonstrate the feasibility of automating the review and adjustment process, using a variety of data sources including FPLS/New Hire earnings data, to better reflect current noncustodial/custodial parent income and assets (*i.e.*, at the time when noncustodial/custodial parent gets a raise or has increased assets and, alternatively, when noncustodial/custodial parent loses a job, has reduced salary, has an excessive default order, *etc.*) Projects would assess outcomes or effects such as the increase in both upward and downward adjustments; payment frequency by noncustodial parent; reduction in arrearage growth created by default orders; systems enhancements and other resources needed; guideline changes; and overall cost-effectiveness of automated review and adjustment.

Funding: A total $200,000 is anticipated to be available for projects in this priority area and OCSE anticipates funding two grants of approximately $100,000 each.

Budget Period: For Priority Area 3, the budget period will be up to 17 months.

Priority Area 4: Expanding Customer Service Through Agency-Initiated Contact

Under this solicitation, OCSE is looking for child support agencies to initiate customer contact to alert customers of upcoming appointments or missed appointments, and potential problems, such as missed payments, in order to improve customer satisfaction or resolve issues before they become problematic. Generally, State/local child support agencies use a responsive approach to customers; *i.e.*, using call centers, Web sites, or individual staff to respond to customer inquiries. The Australian child support enforcement system uses an agency-initiated customer service approach in which caseworkers notify clients, rather than waiting for clients to contact the agency, regarding payments and other case matters. This approach has been successful in Australia.

We are looking for child support agency approaches designed to alert customers to important case activities such as scheduled appointments or hearings, payment changes/delays, and to obtain case information. These projects would demonstrate the effectiveness of initiating contact to notify customers of important case activities or the need for information to complete case actions in order to improve child support outcomes such as increased collections, cost-effectiveness, customer service satisfaction, reduction in arrears, missed appointments, *etc.* Agency-initiated customer contact strategies could include automated notification systems and/or personal staff customer contact. A concern of many child support agencies in initiating client contact is the difficulty in reaching noncustodial and custodial parents by phone, since some do not have stable addresses or phone access. These projects would help determine the feasibility of an agency-initiated approach. Also, we prefer projects that compare different strategies (*automation* vs. *personal contact*) to ascertain which is more feasible and cost-effective; and/or projects that could assess the pros and cons of using agency-initiated approaches in different localities such as urban *vs.* rural localities, or large *vs.* small offices.

Funding: A total $200,000 is anticipated to be available for projects in this priority area and OCSE anticipates funding two grants of approximately $100,000 each.

Budget Period: For Priority Area 4, the budget period will be up to 17 months.

Priority Area 5: Helping Noncustodial Parents (NCPs) Meet Their Child Support and Family Responsibilities

Projects would demonstrate effective child support strategies to help low-income NCPs meet their child support and family responsibilities. There is a very high rate of default cases where the noncustodial parent is either not appropriately served or simply does not show up for either paternity or child support hearings. As a result, orders are not always appropriate for the NCP's financial situation, or are not based on the NCP's actual income. Further, many low-income NCPs fall behind in their payment of child support due to unemployment or underemployment. This solicitation would address at least one of the following design elements:

• Develop, implement and determine the effectiveness of alternative measures for avoiding default cases, and/or using imputed income/minimum order amounts in establishing child support orders which can create excessive payment levels for low-income NCPs. These alternatives could include adopting more customer-friendly approaches in establishing orders for low-income fathers to avoid a high level of default orders (such as using alternative service of process methods to ensure NCPs get served and understand the notice to avoid defaults); and/or securing and using more complete income information, *e.g.* using New Hire data for the NCP and custodial parent in default situations or where incomplete income information is given. Order amounts should be reasonable for low-income NCPs, taking into account their ability to pay when confronted with intermittent unemployment. Applicants must provide assurance that, under State guidelines, orders can be established based upon the NCP's ability to pay. We are looking for outcome measures which would demonstrate that effective alternatives for establishing child support orders in low-income cases result in increased payment rates for low-income NCPs.

• Develop and implement strategies to provide employment services to low-income fathers who are unemployed or under-employed and cannot meet their child support obligations. Projects should include voluntary and/or mandatory referral, as appropriate, of NCPs for employment and training services by child support agencies or courts/tribunals, to local workforce development agencies or other public employment agencies and local organizations, including community-based and faith-based organizations. For example, projects could include collaboration with TANF agencies to use TANF funds to support employment and training services for NCPs in public assistance cases to demonstrate whether custodial parents left TANF more quickly because of child support receipt. Incentive to NCPs could be reduction/compromise of arrears. Or, projects could develop partnerships with workforce development boards and courts/tribunals to demonstrate the impact on child support outcomes if unemployed or under-employed NCPs, who had past due child support obligations, were required to participate in a job training/placement program or be sentenced to a period in jail. Outcome measures would include increased payment rates on orders, as well as increases in employment, job retention rates and wages.

Funding: A total $400,000 is anticipated to be available for projects in this priority area and OCSE anticipates funding two grants of approximately $200,000 each.

Budget Period: For Priority Area 5, the budget period will be up to 17 months.

Priority Area 6: Improving Child Support Services for Ethnic and Culturally Diverse Populations

Under this solicitation, projects would target underserved ethnic and culturally diverse populations, including, but not limited to, the Hispanic/Latino community, the Asian-American and Pacific Islander community, the African-American community, and Native Americans, American Indians, and Alaskan Natives so that they may receive more effective child support enforcement services. OCSE has funded several small-scale community projects which developed outreach media campaigns and language-appropriate materials and/or used community and volunteer resources to help these groups better understand the child support program. Under this solicitation, we are looking for projects which are either statewide or serve multiple counties or a large county. We are interested in collaborations between State/local governments and courts/tribunals with community-based and faith-based organizations to offer model service approaches (not outreach campaigns) that will result in large-scale, systematic, institutionalized approaches to service delivery to underserved populations. Projects should identify nature/causes of barriers to effective child support enforcement service delivery for customers with language and diversity barriers and develop/implement approaches to reduce or eliminate them. Such approaches could include providing bilingual staff, resources, training, etc. to judges/attorneys to address the needs of these customers and assure judicial fairness and/or development of new delivery strategies within the community to increase child support outcomes, such as an increase in numbers of orders established and collections. This solicitation is not designed to provide funding for the development and implementation of Tribal child support enforcement programs since these provisions are being addressed through Federal regulation.

Funding: A total $200,000 is anticipated to be available for projects in this priority area and OCSE anticipates funding two grants of approximately $100,000 each.

Budget Period: For Priority Area 6, the budget period will be up to 17 months.

Priority Area 7: Furthering the Child Support Mission to Ensure All Children Receive Financial and Medical Support From Their Parents

Under this announcement, OCSE is looking for projects that are not covered by any of the above priority areas. OCSE is looking for projects that will test new interventions and approaches to increase paternity and support order establishments and collections. Applicants would propose new ways of doing business, within Federal law and regulations, and put them into effect. We encourage collaborations among entities which may include State/local governments, non-profit organizations, faith-based and community-based organizations, and tribal governments and universities (including historically black colleges and universities).

Funding: A total of $100,000 is anticipated to be available for one grant in this priority area.

Budget Period: For Priority Area 7, the budget period will be up to 17 months.

II. Award Information

Availability of Funds. Approximately $1.5 million is available for all priority areas. OCSE expects to award a total of approximately 13 grants, approximately two grants per priority area, ranging from $100,000 to $200,000, as specified under each priority area.

Over the past five years, OCSE has awarded an average of 9 grants per year, totaling approximately $1.3 million per year. All grant awards are subject to the availability of appropriated funds. A non-Federal match is not required. The anticipated start date for the new awards is May 1, 2004; projects may go through September 2005, for a period of up to 17 months.

III. Eligibility Information

1. *Eligible Applicants.* Eligible applicants for these special improvement project grants are State (including District of Columbia, Guam, Puerto Rico, and the Virgin Islands) Human Services Umbrella agencies, other State agencies (including State IV–D agencies), tribes and tribal organizations, local public agencies (including IV–D agencies), nonprofit organizations (including faith-based and community-based organizations and universities such as historically black colleges and universities) and consortia of State and/or local public agencies. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; a copy of a currently valid IRS tax exemption certificate; a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or any of the items referenced above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

The Federal OCSE will provide the State CSE agency the opportunity to comment on the merits of local CSE agency applications before final award. Given that the purpose of these projects is to improve child support enforcement programs, it is critical that applicants have the cooperation of IV–D agencies to operate these projects. Preference will be given to applicants representing CSE agencies and applicant organizations which have letters of commitment or cooperative agreements with CSE agencies. All applications developed jointly by more than one agency/organization must identify a single lead organization as the official applicant. The lead organization will be the recipient of the grant award. Participating agencies and organizations can be included as co-participants, subgrantees, or subcontractors with their written authorization.

Private non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *www.acf.hhs.gov/programs/ofs/forms.htm.*

2. *Cost Sharing or Matching.* Applicants are not required to match Federal grant funds under this solicitation.

3. *Other.* None.

IV. Application and Submission Information

1. *Address to Request Application Package.* Application kits (Forms 424, 424A–B and Certifications) to apply for a grant under this program announcement are available from the Administration for Children and Families, Office of Child Support Enforcement, Division of State, Tribal and Local Assistance, 370 L'Enfant Promenade, SW., 4th Floor, East Wing, Washington, DC 20447 (this is not the mailing address for submission of applications, *see* Part IV. 3.); or at OCSE's Web site (*www.acf.hhs.gov/programs/cse/*) under new announcements; or from Jean Robinson, Program Analyst, phone (202) 401–5330, Fax (202) 205–4315; e-mail, *jrobinson@acf.hhs.gov.*

For specific questions regarding the application or program concerns regarding the announcement, contact: Susan A. Greenblatt, Deputy Director, Division of State, Tribal and Local Assistance, Office of Child Support Enforcement, 370 L'Enfant Promenade, SW., 4th Floor, East Wing, Washington, DC 20447 (this is not the mailing address for submission of applications, *see* Part IV. 3.); phone (202) 401–4849, e-mail, *sgreenblatt@acf.hhs.gov.*

2. *Content and Form of Application Submission.* The applicant should clearly indicate in its application(s) for which specific priority area it is applying. Applicants may submit different applications covering different priority areas or they may submit different applications for different projects under one priority area; however, **they may not submit one application for the same project covering multi-priority areas.** The length of the application, excluding the application forms, certifications, and resumes, should be about 20 pages, double-spaced format preferred. A page is a single-side of an 8½″ × 11″ sheet of plain white paper. (Applicants are requested not to send pamphlets, maps, brochures or other printed material along with their application as these are difficult to photocopy. These materials, if submitted, will not be included in the review process.) Each page of the application will be counted (excluding required forms, certifications and resumes) to determine the total length. **The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Part V.**

In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

The forms (Forms 424, 424A–B; and Certifications including Certification Regarding Lobbying; Debarment, Suspension, *etc.;* Drug Free Workplace and Environmental Tobacco Smoke) may be found at: *www.acf.hhs.gov/programs/cse/* under new announcements.

Private non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *www.acf.hhs.gov/programs/ofs/forms.htm.*

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a

Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may require a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

The Paperwork Reduction Act of 1995 (Pub. L. 104–13): All information collections within this program announcement are approved under the following currently valid OMB control number: OMB control number 0970–0139 which expires on 12/31/2003. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the 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 OMB control number.

3. *Submission Dates and Times.* Due date: March 3, 2004. *See* section IV.6 for more detailed information on submission requirements.

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described above	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Abstract of Proposed Project	Brief abstract that identifies the type of project, the target population and the major elements of the proposed project.	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Completed Standard Form 424	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Completed Standard Form 424A.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Narrative Budget Justification	As described above	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Project Narrative	A narrative that addresses issues described in the ''Application Review Information'' and the ''Review and Selection Criteria'' sections of this announcement.	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Certification regarding lobbying	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding drug-free workplace.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding environmental tobacco smoke.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding debarment, suspension or ineligibility.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding non-construction programs.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

4. *Intergovernmental Review.* This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 28 jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by federally-recognized Indian tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or indicate ''not applicable'' if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCSs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370

L'Enfant Promenade, SW., 4th floor, Washington, DC 20447.

A list of the Single Points of Contact for each participating State and Territory can be found on the Web at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. *Funding Restrictions.* Construction is not an allowable activity or expenditure under this solicitation. Grant awards will not allow reimbursement of pre-award costs.

6. *Other Submission Requirements.* Applicants may choose to mail applications or have them hand-delivered. **The closing time and date for the receipt of applications is 4:30 p.m. (eastern time zone), March 3, 2004. Mailed or hand-delivered applications received after 4:30 p.m. on the closing date will be classified as late.**

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447, between Monday and Friday (excluding Federal holidays). This address must appear on the envelop/package containing the application with the note ''Attention: Barbara Ziegler Johnson.'' Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Applicants are responsible for mailing applications well in advance to ensure that the application is received on or before the deadline date and time. Applicants should submit a signed original and two copies of the complete application package and submit it as follows:

Mail applications to: Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 4th Floor West, Washington, DC 20447. Attn: Barbara Ziegler Johnson, SIP Application.

Hand-delivered applications to: Applications should be hand delivered, between the hours of 8 a.m. and 4:30 p.m., e.s.t., addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Attention: Barbara Ziegler Johnson, SIP Application, and delivered at ACF Mailroom, 2nd Floor (near loading dock), Aerospace Building, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application. ACF will not send applicants an acknowledgement of receipt for applications received during the application period.

Questions may be directed to: Barbara Ziegler Johnson, Office of Grants Management, Division of Discretionary Grants, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor West, Washington, DC 20447; (202) 401–4646, *bziegler-johns1@acf.hhs.gov.*

Late applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. on the deadline date will not be considered for competition. Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Extension of deadlines: ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, *etc.*) occur, or when there are widespread disruptions of the mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with ACF's Chief Grants Management Officer.

ACF cannot accommodate transmission of applications by fax. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive 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.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*
- You must search for the downloadable application package by the CFDA number.

V. Application Review Information

Instruction: The project description is approved under OMB control number 0970–0139 which expires 12/31/2003. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Uniform Project Description (UPD) elements to be included in the project description are:

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criterion should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants are required to submit a full project description and shall prepare the project description statement in accordance with the instructions and the specified evaluation criteria in the sections below. The instructions give a broad overview of what your project description should include while the evaluation criteria expand and clarify more program-specific information that is needed.

Project Summary Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. For example, increased use of an interstate child support enforcement remedy (such as income withholding, tax refund offset) is projected to have quarterly results of a 5% increase in income withholding collections and a 5% increase in automated enforcement collections. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.'' List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information Form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness and allocability of the proposed costs.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, *etc.* Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or business to be financed by the applicant.

1. *Evaluation Criteria.* Proposed projects will be reviewed using the following evaluation criteria:

Criterion I: Objectives and Need for Assistance (Maximum 30 points)

The application should demonstrate a thorough understanding and analysis of the problem(s) being addressed in the project, the need for assistance and the importance of addressing these problems in improving the effectiveness of the child support program. The applicant should describe how the project will address this problem(s) through implementation of changes, enhancements and innovative efforts and specifically, how this project will improve program results. The applicant should address one or more of the activities listed under the ''Design Elements in the Application'' described above for the specific priority area they are applying for (refer to Part I. Priority Areas). The applicant should identify the key goals and objectives of the project; describe the conceptual framework of its approach to resolve the identified problem(s); and provide a rationale for taking this approach as opposed to others.

Criterion II: Approach (Maximum: 30 points)

A well thought-out and practical management and staffing plan is mandatory. The application should include a detailed management plan that includes time-lines and detailed

budgetary information. The main concern in this criterion is that the applicant should demonstrate a clear idea of the project's goals, objectives, and tasks to be accomplished. The plan to accomplish the goals and tasks should be set forth in a logical framework. The plan should identify what tasks are required of any contractors and specify their relevant qualifications to perform these tasks. Staff to be committed to the project (including supervisory and management staff) at the state and/or local levels must be identified by their role in the project along with their qualifications and areas of particular expertise. In addition, for any technical expertise obtained through a contract or subgrant, the desired technical expertise and skills of proposed positions should be specified in detail. The applicant should demonstrate that the skills needed to operate the project are either on board or can be obtained in a reasonable time.

Criterion III: Evaluation (Maximum 25 points)

The application describes how the success of this project can be measured and how the success of this project has broader application in contributing to child support enforcement policies, practices, and/or providing solutions that could be adapted by other states/jurisdictions. The application describes the specific results/products that will be achieved; as appropriate, identifies the kinds of data to be collected and maintained; describes procedures for informed consent of participants, where applicable, and discusses the criteria to be used to evaluate the results of the project. The application describes the evaluation methodology to be used to determine if the process proposed was implemented and if the project goals/objectives were achieved. Sound evaluations to determine whether or not project goals have been realized are of importance to child support enforcement policy makers and administrators. Thus, the proposal should include a process evaluation component and comparison of before/and after the project site(s)' experience, as appropriate, to demonstrate the results achieved.

Criterion IV: Budget and Budget Justification (Maximum 10 points)

The project costs need to be reasonable in relation to the identified tasks, including the evaluation component. A detailed budget (*e.g.*, the staff required, equipment and facilities that would be leased or purchased) should be provided identifying all agency and other resources (*i.e.*, State, community, or other programs such as TANF or Head Start) that will be committed to the project. Grant funds cannot be used for capital improvements or the purchase of land or buildings. Explain why this project's resource requirements cannot be met by the State/local agency's regular program operating budget.

Criterion V: Preferences (Maximum 5 points)

Preference will be given to those grant applicants representing IV–D agencies and applicant organizations who have documented IV–D agency commitment to the project, either through a cooperative agreement or letter of commitment, which needs to be signed and attached to the application.

2. *Review and Selection Process.* Each application submitted under this program announcement will undergo a pre-review to determine that (1) The application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding. It is necessary that applicants state specifically which priority area they are applying for. Applications will be screened for priority area appropriateness. If applications are found to be inappropriate for the priority area in which they are submitted, applicants will be contacted for verbal approval of redirection to a more appropriate priority area.

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The results of these reviews will assist the Commissioner and OCSE program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding because other factors are taken into consideration. These include, but are not limited to, the number of similar types of existing grants or projects funded with OCSE funds in the last five years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; an applicant's progress in resolving any final audit disallowance on previous OCSE or other Federal agency grants. OCSE will consider the geographic distribution of funds among States and the relative proportion of funding among rural and urban areas. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement.

Federal reviewers will be used for the review process.

3. *Anticipated Announcement and Award Dates.* OCSE anticipates that successful and unsuccessful applicants will be notified of the results of this grant competition within 90 days of the application deadline date identified in the ''Overview Information'' section under Dates.

VI. Award Administration Information

1. *Award Notices.* Successful applicants will receive, by postal mail, a cover letter signed by the Commissioner, OCSE, attaching the official notice of award, the Financial Assistance Award (FAA) notice, which is signed by the grants management officer. As indicated in Part V.3. above, OCSE anticipates that successful and unsuccessful applicants will be notified of the results of this grant competition within 90 days of the application deadline.

2. *Administrative and National Policy Requirements.* 45 CFR part 74 and 45 CFR part 92.

3. *Reporting.* All grantees are required to submit quarterly program reports; grantees are also required to submit semi-annual expenditure reports using the required financial standard form (SF–269) which is located on the Internet at: *http://forms.psc.gov/forms/sf/SF–269.pdf.* A suggested format for the program report will be sent to all grantees after the awards are made.

VII. Agency Contacts

For copies of forms and the announcement, contact: Jean Robinson, Program Analyst, at (202) 401–5330, Fax (202) 205–4315; email, *jrobinson@acf.dhhs.gov.*

For questions regarding application development, forms, or program concerns regarding the announcement contact: Susan A. Greenblatt, Deputy Director, Division of State, Tribal and Local Assistance, at (202) 401–4849; e-mail, *sgreenblatt@acf.dhhs.gov.*

For questions regarding application submittal or other grants management concerns, contact Barbara Ziegler Johnson at (202) 401–4646; e-mail, *bziegler-johns1@acf.hhs.gov.*

VIII. Other Information

Funding Reconsideration. After Federal funds are exhausted for this grant competition, applications which have been independently reviewed and ranked but have no final disposition (neither approved nor disapproved for funding) may again be considered for funding. Reconsideration may occur at any time funds become available within twelve (12) months following ranking. ACF does not select from multiple ranking lists for a program. Therefore, should a new competition be scheduled and applications remain ranked without final disposition, applicants are informed of their opportunity to reapply for the new competition, to the extent practical.

Sherri Z. Heller,

Commissioner, Office of Child Support Enforcement.

[FR Doc. 03–31375 Filed 12–18–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Survey of Refugees.

OMB No.: 0970–0033.

Description: The Annual Survey of Refugees collects information on the economic circumstances of a random sample of refugees, Amerasians, and entrants who arrived in the United States during the previous five years. The survey focuses on their training, labor force participation, and welfare utilization rates. Data are segmented by region of origin, state of resettlement, and number of months since arrival. From their responses, the Office of Refugee Resettlement reports on the economic adjustment of refugees to the American economy. These data are used by Congress in its annual deliberations of refugee admissions and funding and by program managers in formulating policies for the future direction of the Refugee Resettlement Program.

Respondents: Refugees.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–9	2,000	1	.6666	1,333

Estimated Total Annual Burden Hours:

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, *E-mail address: Lauren_wittenberg@omb.eop.gov.*

Dated: December 10, 2003.

Robert Sargis,

Reports Clearance Officer

[FR Doc. 03–31377 Filed 12–18–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: National Medical Support Notice (NMSN).

OMB No.: 0970–0222.

Description: The information collected by state IV–D child support enforcement agencies is used to complete the National Medical Support Notice (NMSN) that is sent to employers of employee/obligors and used as a means of enforcing the health care coverage provision in a child support order. Primarily, the information the state child support enforcement agencies use to complete the NMSN is information that is necessary for the enrollment of the child in employment-related health care coverage, such as the employee/obligor's name, address, and social security number; the employer's name and address; the name and address of the alternate recipient (child); and the custodial parent's name and address. The employer forwards the second part of the NMSN which contains the same individual identifying information to the group health plan administrator. The plan administrator requires this information to determine whether to enroll the alternate recipient in the group health plan. If necessary, the employer also initiates withholding from the employee's wages for the purpose of paying premiums to the group health plan for enrollment of the child.

Respondents: State and local title IV–D child support enforcement agencies initiate the process of enforcing medical health care coverage for the child by completing and sending the notice to known employers of the noncustodial parents (employee/obligor). Employers and plan administrators are on the receiving end of the notice.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
NMSN	54	13,454	.17	123,507

Estimated Total Annual Burden Hours: 123,507.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–31378 Filed 12–18–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: National Directory of New Hires.

OMB No.: 0970–0166.

Description: Public Law 104–193, the ''Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' requires the Office of Child Support Enforcement (OCSE) to operate a National Directory of New Hires (NDNH) to improve the ability of state child support enforcement agencies to locate noncustodial parents and collect child support across state lines. The law requires employers to report newly hired employees to states. States are then required to periodically transmit new hire data received from employers to the NDNH, and to transmit wage and unemployment compensation claims data to the NDNH on a quarterly basis. Federal agencies are required to report new hires and quarterly wage data directly to the NDNH. All data is transmitted to the NDNH electronically.

Respondents: Employers, State Child Support Enforcement Agencies, State Employment Security Agencies, Federal Agencies.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Hire: Employers Reporting Manually	5,166,000	3.484	.0417 hours (2.5 minutes)	750,531
New Hire: Employers Reporting Electronically	1,134,000	37.037	.00028 hours (1 second)	11,760
New Hire: States	54	83.333	266.668 hours	1,200,001
Quarterly Wage and Unemployment Compensation	54	8	.033 hours (2 minutes)	14
Multistate Employers' Notification Form	2508	1	.050 hours (3 minutes)	125

Estimated Total Annual Burden Hours: 1,962,431 hours.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–31379 Filed 12–18–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Provision of Services in Interstate Child Support Enforcement: Standard Forms.

OMB No.: 0970–0085.

Description: Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, amended 42 U.S.C. 666 to require state child support enforcement (CSE) agencies to enact the Uniform Interstate Family Support Act (UIFSA) into state law by January 1, 1998. Section 311(b) of UNIFSA requires the states to use standard interstate forms, as mandated by Federal law. 45 CFR 303.7 also

requires CSE programs to transmit child support case information on standard interstate forms when referring cases to other states for processing. The forms are expiring and we are taking the opportunity to make small revisions that have been requested by states.

Respondents: State agencies administering the child support enforcement program under title IV–D of the Social Security Act.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Transmittal 1	54	19,278	.25	260,253
Transmittal 2	54	14,458	.08	62,459
Transmittal 3	54	964	.08	4,164
Uniform Petition	54	9,639	.08	41,640
General Testimony	54	11,567	.33	206,124
Affidavit—Paternity	54	4,819	.17	44,238
Locate Data Sheet	54	375	.08	1,620
Notice of Controlling Order	54	964	.08	4,164
Registration Statement	54	8,675	.08	37,476

Estimated Total Annual Burden Hours: 662,138

It compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-Mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 10, 2003

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–31380 Filed 12–18–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Administration for Native Americans Consultant and Evaluator Qualifications Form.

OMB No. New Collection.

Description: The Administration for Native Americans (ANA) Consultant and Evaluator Qualifications Form is used to collect information from prospective panel reviewers in compliance with 42 USC Section 2991d–1. The form will allow the Commissioner of ANA to select qualified people to review grant applications for: Social and Economic Development Strategies (SEDS), Language Preservation and Environmental Mitigation. The panel review process is a legislative mandate in the ANA grant funding process.

Respondents are drawn from the public with a legislatively required preference being given to those who are Native American, Native Alaskan, Native Hawaiian and other Pacific Islanders. These project evaluation panels review and rank applications.

Respondents: Tribal members, the public.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Consultant and Evaluator Qualifications Form	300	1	28	8,400

Estimated Total Annual Burden Hours: 8,400

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 15, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–31381 Filed 12–18–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000N–1449]

Agency Information Collection Activities; Comment Request; Guidance for Industry—Changes to an Approved New Drug Application or Abbreviated New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in a guidance for industry entitled ''Changes to an Approved NDA or ANDA.''

DATES: Submit written or electronic comments on the collection of information by February 17, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Division of Dockets Management, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry—Changes to an Approved NDA or ANDA (OMB Control Number 0910–0431)—Extension

On November 21, 1997, the President signed the Food and Drug Administration Modernization Act (the Modernization Act) (Pubic Law 105–115) into law. Section 116 of the Modernization Act amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506A (21 U.S.C. 356a), which describes requirements and procedures for making and reporting manufacturing changes to approved new drug applications (NDAs) and abbreviated new drug applications (ANDAs), to new and abbreviated animal drug applications, and to license applications for biological products.

The guidance is intended to assist applicants in determining how they should report changes to an approved NDA or ANDA under section 116 of the Modernization Act, which provides requirements for making and reporting manufacturing changes to an approved application and for distributing a drug product made with such changes.

The guidance provides recommendations to holders of approved NDAs and ANDAs who intend to make postapproval changes in accordance with section 506A of the act. The guidance covers recommended reporting categories for postapproval changes for drugs, other than specified biotechnology and specified synthetic biological products. Recommendations are provided for postapproval changes in the following areas: (1) Components and composition, (2) sites, (3) manufacturing process, (4) specification(s), (5) package, (6) labeling, and (7) miscellaneous changes.

Some of the basic elements of section 506A of the act are as follows:

A drug made with a manufacturing change, whether a major manufacturing change or otherwise, may be distributed only after the applicant validates the effects of the change on the identity, strength, quality, purity, and potency of the drug as these factors may relate to the safety or effectiveness of the drug (sections 506A(a)(1) and (b) of the act). This section recognizes that additional testing, beyond testing to ensure that an approved specification is met, is required to ensure unchanged identity, strength, quality, purity, or potency as these factors may relate to the safety or effectiveness of the drug.

A drug made with a major manufacturing change may be distributed only after the applicant submits a supplemental application to FDA and the supplemental application is approved by the agency. The application is required to contain information determined to be appropriate by FDA and include the information developed by the applicant when ''validating the effects of the change'' (section 506A(c)(1) of the act).

A major manufacturing change is a manufacturing change determined by FDA to have substantial potential to adversely affect the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug. Such changes include the following possibilities: (1) A change made in the qualitative or quantitative formulation of the drug involved or in the specifications in the approved application or license unless exempted by FDA by regulation or guidance; (2) a change determined by FDA by regulation or guidance to require completion of an appropriate clinical study demonstrating equivalence of the drug to the drug manufactured without the change; and (3) other changes determined by FDA by regulation or guidance to have a

substantial potential to adversely affect the safety or effectiveness of the drug (section 506A(c)(2) of the act).

FDA may require submission of a supplemental application for drugs made with manufacturing changes that are not major (section 506A(d)(1)(B) of the act) and establish categories of manufacturing changes for which a supplemental application is required (section 506A(d)(1)(C) of the act). In such a case the applicant may begin distribution of the drug 30 days after FDA receives a supplemental application unless the agency notifies the applicant within the 30 day period that prior approval of the application is required (section 506A(d)(3)(B)(i) of the act). FDA may also designate a category of manufacturing changes that permit the applicant to begin distributing a drug made with such changes upon receipt by the agency of a supplemental application for the change (section 506A(d)(3)(B)(ii) of the act). If FDA disapproves a supplemental application, the agency may order the manufacturer to cease the distribution of drugs that have been made with the disapproved change (section 506A(d)(3)(B)(iii) of the act).

FDA may authorize applicants to distribute drugs without submitting a supplemental application (section 506A(d)(1)(A) of the act) and may establish categories of manufacturing changes that may be made without submitting a supplemental application (section 506A(d)(1)(C) of the act). The applicant is required to submit a report to FDA on such a change and the report is required to contain information the agency deems to be appropriate and information developed by the applicant when validating the effects of the change. FDA may also specify the date on which the report is to be submitted (section 506A(d)(2)(A) of the act). If during a single year an applicant makes more than one manufacturing change subject to an annual reporting requirement, FDA may authorize the applicant to submit a single report containing the required information for all the changes made during the year (annual report) (section 506A(d)(2)(B) of the act).

Section 506A of the act provides FDA with considerable flexibility to determine the information and filing mechanism required for the agency to assess the effect of manufacturing changes in the safety and effectiveness of the product. There is a corresponding need to retain such flexibility in the guidance on section 506A of the act to ensure that the least burdensome means for reporting changes are available. FDA believes that such flexibility will allow it to be responsive to increasing knowledge of and experience with certain types of changes and help ensure the efficacy and safety of the products involved. For example, a change that may currently be considered to have a substantial potential to have an adverse effect on the safety or effectiveness of the product may, at a later date, based on new information or advances in technology, be determined to have a lesser potential to have such an adverse effect. Conversely, a change originally considered to have a minimal or moderate potential to have an adverse effect on the safety or effectiveness of the product may later, as a result of new information, be found to have an increased, substantial potential to adversely affect the product. The guidance enables the agency to respond more readily to knowledge gained from manufacturing experience, further research and data collection, and advances in technology. The guidance describes the agency's current interpretation of specific changes falling into the four filing categories. Section 506A of the act explicitly provides FDA the authority to use guidance documents to determine the type of changes that do or do not have a substantial potential to adversely affect the safety or effectiveness of the drug product. The use of guidance documents allows FDA to more easily and quickly modify and update important information.

As explained in the next paragraph, FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

Federal Food, Drug, and Cosmetic Act Section	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Hours
506A(c)(1) and (c)(2) Prior Approval Supplement	263	5.8	1,517	150	227,550
506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(i) Changes being effected (CBE) in 30-days Supplement	274	8.5	2,322	95	220,590
506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(ii) CBE Supplement	202	9.7	1,959	95	186,105
506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B) Annual Report	580	13.2	7,639	35	267,365
Total					901,610

There are no capital costs or operating and maintenance costs associated with this collection of information.

Section 506A(a)(1) and (b) of the act requires the holder of an approved application to validate the effects of a manufacturing change on the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug before distributing a drug made with the change. Under section 506A(d)(3)(A) of the act, information developed by the applicant to validate the effects of the change regarding identity, strength, quality, purity, and potency is required to be submitted to FDA as part of the supplement or annual report. Thus, no separate estimates are provided for these sections in table 1 of this document; estimates for validation requirements are included in the estimates for supplements and annual reports. The guidance does not provide recommendations on the specific information that should be developed by the applicant to validate the effect of the change on the identity, strength (e.g., assay, content uniformity); quality (e.g., physical, chemical, and biological properties); purity (e.g., impurities and degradation products); or potency (e.g., biological activity, bioavailability, and bioequivalence) of a product as they may relate to the safety or effectiveness of the product.

Section 506A(c)(1) and (c)(2) of the act sets forth requirements for changes requiring supplement submission and approval prior to distribution of the product made using the change (major changes). Under these sections of the act, a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of

the product as these factors may relate to the safety or effectiveness of the product. The applicant must obtain approval of a supplement from FDA prior to distribution of a product made using the change.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 1,517 supplements will be submitted annually under section 506A(c)(1) and (c)(2) of the act. FDA estimates that approximately 263 applicants will submit such supplements, and that it will take approximately 150 hours to prepare and submit to FDA each supplement.

Section 506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(i) sets forth requirements for changes requiring supplement submission at least 30 days prior to distribution of the product made using the change (moderate changes). Under these sections, a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a moderate potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. Distribution of the product made using the change may begin not less than 30 days after receipt of the supplement by FDA.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 2,322 supplements will be submitted annually under section 506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(i) of the act. FDA estimates that approximately 274 applicants will submit such supplements, and that it will take approximately 95 hours to prepare and submit to FDA each supplement.

Under section 506A(d)(3)(B)(ii) of the act, FDA may designate a category of changes for the purpose of providing that, in the case of a change in such category, the holder of an approved application may commence distribution of the drug upon receipt by the agency of a supplement for the change. Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 1959 supplements will be submitted annually under section 506A(d)(3)(B)(ii) of the act. FDA estimates that approximately 202 applicants will submit such supplements, and that it will take approximately 95 hours to prepare and submit to FDA each supplement.

Section 506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B) of the act sets forth requirements for changes to be described in an annual report (minor changes). Under these sections, changes in the product, production process, quality controls, equipment, or facilities that have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product must be documented by the applicant in the next annual report.

Based on data concerning the number of supplements and annual reports received by the agency, FDA estimates that approximately 7,639 annual reports will include documentation of certain manufacturing changes as required under section 506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B). FDA estimates that approximately 580 applicants will submit such information and that it will take approximately 35 hours to prepare and submit to FDA the information for each annual report.

Dated: December 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31412 Filed 12–17–03; 1:28 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Drug Safety and Risk Management Advisory Committee and the Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Drug Safety and Risk Management Advisory Committee and the Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 26 and 27, 2004, from 8 a.m. to 5 p.m.

Location: Hilton, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Shalini Jain, 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, e-mail: *jains@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512535 or 3014512534. Please call the Information Line for up-to-date information on this meeting.

The background materials for this meeting will become available no later than 1 business day before the meeting and will be posted at: *www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2003 and scroll down to either the Drug Safety and Risk Management Advisory Committee or the Dermatologic and Ophthalmic Drugs Advisory Committee meetings.)

Agenda: The committee will discuss the following topics: (1) The effectiveness of the isotretinoin risk management program for the prevention of fetal exposure to ACCUTANE and its generic equivalents, and (2) consider whether changes to this isotretinoin risk management program would be appropriate.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 16, 2004. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon on February 26, 2004, and between approximately 8:30 a.m. and 9:30 a.m. on February 27, 2004. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 16, 2004, 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 Shalini Jain 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: December 15, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–31385 Filed 12–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee); Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee).

General Function of the Committee: To advise the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand Study by the U.S. Air Force and provide scientific oversight of the Department of Veterans Affairs Army Chemical Corps Vietnam Veterans Health Study, and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the committee is desirable.

Date and Time: The meeting will be held on January 21, 2004, 8 a.m. to 3:30 p.m.

Location: Food and Drug Administration, 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

Contact Person: Leonard Schechtman, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512560. Please call the Information Line for up-to-date information on this meeting.

Agenda: The U.S. Air Force will provide a program management update and present information on the following topics: Syndrome X; cancer and hepatitis in the comparison group vs. years in Southeast Asia; prostate cancer; adipose tissue study results; and memory loss and end of study transition.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 9, 2004. Oral presentations from the public will be scheduled between approximately 1:30 p.m. to 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 6, 2004, 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 Leonard Schechtman 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: December 15, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–31386 Filed 12–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0525]

Guidance for Industry and FDA Staff; Premarket Notification Submissions for Chemical Indicators; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Premarket Notification [510(k)] Submissions for Chemical Indicators.'' The document provides guidance for industry and other interested parties regarding the submission of chemical indicators such as process indicators, chemical integrators, and air removal indicators used in test packs.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Premarket Notification [510(k)] Submissions for Chemical Indicators'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Chiu Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913, ext. 143.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance is for chemical indicators intended for use in health care facilities. Chemical indicators are Class II devices identified in 21 CFR 880.2800. The chemical indicators discussed in the guidance document include process indicators, chemical integrators, and air removal indicators used in test packs such as the Bowie Dick Test Pack.

In the **Federal Register** of January 27, 2003 (68 FR 3887), FDA invited interested persons to comment by April 28, 2003, on the draft guidance entitled ''Chemical Indicators Premarket Notification [510(k)] Submissions; Draft Guidance for Industry and FDA.'' FDA received one comment. FDA considered the comment and revised the guidance document for clarity.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115). The guidance represents the agency's current thinking on chemical

indicators used in health care facilities. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 USC 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

IV. Electronic Access

To receive a copy of ''Premarket Notification [510(k)] Submissions for Chemical Indicators'' by fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1420) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding the guidance at any time. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*, or submit two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 4, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–31384 Filed 12–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0562]

Compliance Policy Guide Sec.110.300—''Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a compliance policy guide (CPG) Sec. 110.300 entitled ''Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' The CPG provides written guidance to FDA's staff on enforcement of section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulation, which require, beginning on December 12, 2003, registration with FDA for all domestic and foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States.

DATES: This guidance is final upon the date of publication. However, you may submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Food for human consumption: Judith Gushee, Division of Enforcement, Office of Compliance, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 301–436–2417.

Food for animal consumption: Isabel Pocurull, Division of Animal Feeds, Office of Surveillance and Compliance, Center for Veterinary Medicine, Food and Drug Administration, 301–827–0175.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of CPG Sec.110.300 entitled ''Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' This guidance outlines for FDA staff the agency's policy on enforcement of section 305 of the Bioterrorism Act and its implementing regulation (68 FR 58894, October 10, 2003; to be codified at 21 CFR part 1, subpart H). The Bioterrorism Act and subpart H require that, beginning on December 12, 2003, all domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States be registered with FDA.

FDA is issuing this document as level 1 guidance consistent with FDA's good guidance practices regulation § 10.115 (21 CFR 10.115). The CPG Sec. 110.300 is being implemented immediately without prior public comment, under § 10.115(g)(2), because the agency has determined that prior public participation is not feasible. As noted, under section 305 of the Bioterrorism Act, the requirement that food facilities be registered is effective December 12, 2003, making it urgent that the agency explain how it intends to enforce this requirement.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of this guidance is available on the Internet at *http://www.fda.gov/ora* under ''Compliance References.''

Dated: December 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31376 Filed 12–17–03; 9:09 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

Proposed Project: Health Center Expansion and Recruitment Survey—New

HRSA's Office of Rural Health Policy (ORHP) currently funds a number of Rural Health Research Centers in the United States, allocating funding through cooperative agreements. Authorized by Section 301 of the Public Health Service Act (42 U.S.C. 241), ORHP conducts research and investigations to render assistance to appropriate public authorities in the areas of the health and well-being of rural populations in the United States. A major current initiative of HRSA is the expansion of Health Centers (HCs) receiving funding under section 330 of the PHS Act, which provides medical care to lower income Americans regardless of the ability to pay in rural and urban areas.

HCs are a key element of the nation's medical care safety net, and are scheduled to expand the scope of their operations in the near future. One of the issues affecting HC expansion is their ability to recruit adequate numbers of medical and administrative personnel to accomplish their mission, particularly in rural areas, where there have been persistent problems recruiting and retaining health care personnel. HRSA's Office of Rural Health Policy (ORHP) has funded a study in collaborative oversight with the Bureau of Primary Health Care (BPHC) and the Bureau of Health Professions (BHPr), to collect information from HCs on issues concerning the recruitment of various types of health professionals and administrative personnel.

This data collection effort is designed to assess the problems encountered by rural and remote HCs in their efforts to recruit needed personnel as well as the types of programs employed in recruitment efforts, and to compare these patterns with prevailing programs in urban HCs. This one-time survey will collect information on all HCs receiving section 330 grant funding in the United States. The survey includes 13 separate response items, and will collect information from HC administrators on health care professional staffing, recruitment trends and issues and needs among HCs throughout the nation. The data collected will improve HRSA's abilities in forecasting needs for personnel as HCs expand, planning recruitment programs and strategies, and implementing of local and national policy initiatives to meet the personnel demands of HCs so that access to health care is maximized.

The burden estimates are as follows:

Health center expansion and recruitment survey	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden/hours per response	Total burden hours
Survey instruments	845	1	845	.25	211

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 11, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31250 Filed 12–18–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL) Program Regulations (OMB No. 0915–0108)—Revision

This clearance request is for a revision to the approval of the notification, reporting and recordkeeping requirements in the HEAL program to insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under this OMB number,

much of the burden associated with the regulations is cleared under the OMB numbers for the HEAL forms and electronic submissions used to report required information (listed below). The table listed at the end of this notice contains the estimate of burden for the remaining regulations.

Annual Response Burden for the following regulations is cleared by OMB when the reporting forms are cleared:

OMB Approval No. 0915–0034, Lender's Contract Application and Borrower Deferment Forms, and Borrower Loan Status and Loan Transfers/Purchases and Consolidation Tape Specification and Submission

Reporting
- 42 CFR 60.31(a), Lender annual application
- 42 CFR 60.38(a), Loan Reassignment

Notification
- 42 CFR 60.12(c)(1), Borrower deferment

OMB Approval No. 0915–0036, Lender's Application for Insurance Claim

Reporting
- 42 CFR 60.35(a)(1), Lender due-diligence activities
- 42 CFR 60.35(a)(2), Lender skip-tracing activities
- 42 CFR 60.40(a), Lender documentation to litigate a default
- 42 CFR 60.40(c)(i), (ii), and (iii), Lender default claim
- 42 CFR 60.40(c)(2), Lender death claim
- 42 CFR 60.40(c)(3), Lender disability claim
- 42 CFR 60.40(c)(4), Lender report of student bankruptcy

OMB Approval No. 0915–0043, Promissory Note, Repayment Schedule, Call Report

Notification
- 42 CFR 60.11(e), Establishment of repayment terms-borrower
- 42 CFR 60.11(f)(5), Borrower notice of supplemental repayment agreement
- 42 CFR 60.33(e), Executed note to borrower
- 42 CFR 60.34(b)(1), Establishment of repayment terms-lender
- 42 CFR 60.42(b), Lender Quarterly Report on HEAL Loans Outstanding (Call Report)

OMB Approval No. 0915–0204, Physicians Certification of Permanent and Total Disability

Reporting
- 42 CFR 60.39(b)(2), Holder request to Secretary to determine borrower disability

OMB Approval No. 0915–0227, Federal Health Education Assistance Loan Refinancing Application/Promissory Note

Reporting
- 42 CFR 60.7, Application for loan
- 42 CFR 60.18 Consolidation of a HEAL loan

The estimate of burden for the regulatory requirements of this clearance are as follows:

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN

Number of respondents	Number of transactions per respond	Total transactions	Time per response (in hours)	Total burden hours
Reporting Requirements				
28 Lenders	3	86	.55	47
190 Schools	.4	78	.17	13
Total Reporting				60
Notification Requirements				
28 Lenders	6,855	191,961	.16	30,687
190 Schools	2.15	409	.47	194
7,930 Borrowers	1	7,930	.17	1,322
Total Notification				32,203
Recordkeeping Requirements				
28 Lenders	3,184	89,165	.22	19,974
190 Schools	476	90,453	.25	22,681
Total Recordkeeping				42,655

Total Annual Burden: 74,918 hrs.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 15, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31295 Filed 12–18–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: January 14, 2004, 9 a.m. to 5 p.m., January 15, 2004, 9 a.m. to 5 p.m.

Place: Hyatt Regency Bethesda, One Metro Center, Bethesda, Maryland 20814, Phone: (301) 657–1234; Fax: (301) 657–6453.

Status: The meeting will be open to the public.

Agenda: The agenda includes an overview of general Council business activities and priorities. Topics to be addressed will include orientation of new Council members and restructuring subcommittees. In addition, the Council will continue working on the Year 2004 recommendations to the Secretary. Finally, the Council will hear presentations from experts on farmworker issues, including Farmworker Health Services on farmworker health outreach and enabling services, and prevention strategies.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Anyone requiring information regarding the Council should contact Gladys Cate, Office of Minority and Special Populations, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594–0367.

Dated: December 11, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31249 Filed 12–18–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The National Epidemiologic Survey on Alcohol and Related Conditions

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 25, 2003, page 55396 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: The National Epidemiologic Survey on Alcohol and Related Conditions. *Type of Information Collection Request:* REVISION, OMB No. 0925–0484, expiration date, 3/31/2004. *Need and Use of Information Collection:* This study will determine the incidence of alcohol use disorders in a representative sample of the United States population with the primary purpose of estimating the extent and distribution of alcohol consumption, alcohol use disorders and their associated psychological and medical disabilities across major sociodemographic subgroups. The primary objectives of this second wave of this longitudinal study is to understand the relationships between alcohol consumption, alcohol use disorders and their related disabilities with a view towards designing more effective treatment and intervention programs. The findings will provide valuable information concerning: (1) The relationship between alcohol use disorders use disorders and their related disabilities in subgroups of the population of special concern; (2) identification of subgroups at high risk for alcohol use disorders that may be complicated by associated psychological and medical disabilities; (3) incidence of alcohol use disorders and their associated disabilities with a view toward understanding their natural history; (4) treatment utilization of alochol use disorders in order to determine unmet treatment need and linguistic, social, economic and cultural barriers to treatment; (5) the college-aged segment of the population at high risk for binge drinking and its adverse consequences; and (6) the identification of safe and hazardous levels of drinking as they relate to the development of alcohol use disorders and their associated disabilities. *Frequency of Response:* On occasion. *Affected Public:* Individuals. *Type of Respondents:* Adults. The annual reporting burden is as follows: *Estimated Number of Respondents:* 43,093. *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 1.00; and *Estimated Total Annual Burden Hours Requested:* 43,093. The annualized cost to respondents is estimated at: $776,000.00. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methdology 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.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Bridget Grant, Chief, Laboratory of Biometry and Epidemiology, Division of Intramural Clinical and Biological Research, NIAAA, NIH, Willco Building, Suite 514, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–7370 or E-mail your request, including your address to: *Bgrant@willco.niaaa.nih.gov*.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: December 15, 2003.

Stephen Long,

Executive Officer, NIAAA.

[FR Doc. 03–31321 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Proposed Collection; Comment Request; Customer and Other Partners Satisfaction Surveys

Summary: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for the opportunity for pubic comment on the proposed data collection projects, the Warren Grant Magnuson Clinical Center (CC), the National Institutes of Health, (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Customer and Other Partners Satisfaction Surveys. *Type of Information Collection Request:* New request/waiver. *Need and Use of Information Collection:* The information collected in these surveys will be used by Clinical Center personnel: (1) To evaluate the satisfaction of various Clinical Center customers and other partners with Clinical Center services; (2) to assist with the design of modifications of these services, based on customer input; (3) to develop new services, based on customer need; and (4) to evaluate the satisfaction of various Clinical Center customers and other partners with implemented service modifications. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline the Clinical Center's operations. The major mechanisms by which the Clinical Center will request customer input is through surveys and focus groups. The surveys will be tailored specifically to each class of customer and to that class of customer's needs. Surveys will either be collected as written documents, as faxed documents, mailed electronically or collected by telephone from customers. Information gathered from these surveys of Clinical Center customers and other partners will be presented to, and used directly by, Clinical Center management to enhance the services and operations of our organization. *Frequency of Response:* The participants will respond yearly. *Affected public:* Individuals and households; businesses and other for profit, small businesses and organizations. *Types of respondents:* These surveys are designed to assess the satisfaction of the Clinical Center's major internal and external customers with the services provided. These customers include, but are not limited to, the following groups of individuals: Clinical Center patients, family members of Clinical Center patients, visitors to the Clinical Center, National Institutes of Health investigators, NIH intramural collaborators, private physicians or organizations who refer patients to the Clinical Center, volunteers, vendors and collaborating commercial enterprises, small businesses, regulators, and other organizations. The annual reporting burden is as follows:

Customer	Type of survey	Estimated number to be surveyed	Expected response rate (percent)	Time to complete survey (minutes)	Estimated burden hours
FY 2004					
Clinical Center Patients	Questionnaire	5000	50	30	1250
Family Members of Patients	Questionnaire	3000	50	30	750
Visitors to the Clinical Center	Questionnaire	1500	15	10	37.5
Clinical Center Employees	Questionnaire/Electronic	2500	60	20	501
NIH Investigators	Questionnaire/Electronic	2400	25	30	300
NIH Intramural Collaborators	Questionnaire/Electronic	1500	30	15	112.5
Vendors and Collaborating Commercial Enterprises.	Questionnaire	2000	20	15	100
Professionals and Organizations Referring Patients.	Questionnaire/Electronic	1000	30	20	100.2
Regulators	Questionnaire/Electronic	30	85	20	8.5
Volunteers	Questionnaire	275	60	20	55.11
Total		19,205			3215.01
FY 2005					
Clinical Center Patients	Questionnaire/Electronic	5000	50	30	1250
Family Members of Patients	Questionnaire/Electronic	2000	50	30	500
Visitors to the Clinical Center	Questionnaire/Electronic	1000	15	10	25
Clinical Center Employees	Questionnaire/Electronic	2500	60	20	501
NIH Investigators	Questionnaire/Electronic	2500	25	20	208.75
NIH Intramural Collaborators	Questionnaire/Electronic	1000	30	10	50.1
Vendors and Collaborating Commercial Enterprises.	Questionnaire/Electronic	2500	20	15	125
Professionals and Organizations Referring Patients.	Questionnaire/Electronic	3000	30	20	300.6
Regulators	Questionnaire/Electronic	25	80	15	5
Volunteers	Questionnaire/Electronic	300	50	15	37.5
Total		19,825			3002.95
FY 2006					
Clinical Center Patients	Questionnaire/Electronic	5000	60	30	1500
Family Members of Patients	Questionnaire/Electronic	2000	40	30	400
Visitors to the Clinical Center	Questionnaire/Electronic	1000	15	10	25.05
Clinical Center Employees	Questionnaire/Electronic	2500	60	15	375

Customer	Type of survey	Estimated number to be surveyed	Expected response rate (percent)	Time to complete survey (minutes)	Estimated burden hours
NIH Investigators	Questionnaire/Electronic	2000	25	15	125
NIH Intramural Collaborators	Questionnaire/Electronic	2000	30	10	100.2
Vendors and Collaborating Commercial Enterprises.	Questionnaire/Electronic	2500	15	20	125.25
Professionals and Organizations Referring Patients.	Questionnaire/Electronic	2000	30	20	200.4
Regulators	Questionnaire/Electronic	30	85	205	8.5
Volunteers	Questionnaire/Electronic	275	60	30	82.5
Total		19,305			2,941.9

Estimated costs to the respondents consists of their time; time is estimated using a rate of $10.00 per hour for patients and the public; $30.00 for vendors, regulators, organizations and $55.00 for health care professionals. The estimated annual costs to respondents for each year for which the generic clearance is requested is $27,187.10 for 2004, $31,043 for 2005, and $24,693.70 for 2006. Estimated Capital Costs are $7,000. Estimated Operating and Maintenance costs are $73,000.

Requests for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Clinical Center and the agency, including whether the information shall 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 automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project, or to obtain a copy of the data collection plans and instruments, contact: Dr. David K. Henderson, Deputy Director for Clinical Care, Warren G. Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C 146, 9000 Rockville Pike, Bethesda, Maryland 20892, or call non-toll free: 301–496–3515, or e-mail your request or comments, including your address to: *dkh@nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: December 11, 2003.

David K. Henderson,

Deputy Director for Clinical Care, CC, National Institutes of Health.

[FR Doc. 03–31322 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–10–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of any U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Phenylthiocarbamide (PTC) Taste Receptor

Dennis Drayna, Un-Kyung Kim, Mark Leppart (NIDCD)

U.S. Provisional Application No. 60/306,991 filed 20 Jul 2001 (DHHS Reference No. E–169–2001/0–US–01); International Publication No. W0 03/008627 (DHHS Reference No. E–169–2001/0–PCT–02)

Licensing Contact: Susan Carson; 301/435–5020; *carsonsu@mail.nih.gov*

Bitter taste has evolved in mammals as a central warning signal against ingestion of poisonous or toxic compounds. However, many beneficial compounds are also bitter and taste masking of bitter tasting pharmaceutical compounds is a billion dollar industry. The diversity of compounds that elicit bitter-taste sensations is vast and more than two dozen members of the TAS2R bitter taste receptor gene family have been identified. How individuals are genetically predisposed to respond or not to respond to the bitter taste of substances like nicotine and certain foods like broccoli may have broad implications for nutritional status and tobacco use. Large individual differences in the taste perception of bitter compounds have been well documented, and phenylthiocarbamide (PTC), the subject of this invention by scientists at the NIH and the University of Utah, has been widely used for genetic and anthropological studies.

The PTC receptor encodes a novel member of the G protein-coupled TAS2R bitter taste receptor family (Science (2003) 299, 1221–1225). Three coding SNPs in this gene were identified as giving rise to five haplotypes which accounted for the bimodal distribution of PTC taste sensitivity worldwide. Distinct phenotypes are associated with distinct genotypes and SNPs such as these identifying variations in the PTC receptor would allow taste masking of bitter tasting compounds tailored to the population genetics profile of different groups and populations.

The invention available for licensing includes composition of matter claims for a bitter taste receptor for PTC, antibodies to the receptor and methods

of detecting nucleic acid and amino acid sequences as well as modulators of such PTC taste receptors. The ability to taste PTC has been shown to be correlated with the ability to taste other bitter substances, many of which are toxic. Thus variation in PTC perception and knowledge of the genetic basis of these variants can be used to aid the development of a variety of taste improvements in foods and orally administered medications.

Dated: December 10, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31327 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Thalidomide Analogs

Nigel Greig (NIA),

U.S. Provisional Patent Application filed 17 Sep 2003 (DHHS Reference No. E–189–2003/0–US–01),

Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@mail.nih.gov.*

Inflammatory processes associated with the over-production of cytokines, particularly of tumor necrosis factor-alpha (TNF-a), accompany numerous neurodegenerative diseases, such as Alzheimer's disease and ALS, in addition to numerous common systemic conditions, such as rheumatoid arthritis, septic shock, graft-versus-host disease, Crohn's disease and erythema nodosum leprosum (ENL). TNF-a has been validated as a drug target with the development of the inhibitors Enbril (Amgen, Thousand Oaks, CA/Wyeth, Princeton, NJ) and Remicade (Centocor, Malvern, PA/Schering-Plough, Orange, NJ) as prescription medications for rheumatoid arthritis. Both, however, are large macromolecules and hence are expensive to produce, require direct intravenous or subcutaneous injection, and have negligible brain access. The classical orally active drug, thalidomide (N-a-phthalimidoglutarimide), a glutamic acid derivative, is being increasingly used in the clinical management of a wide spectrum of immunologically-mediated and infectious diseases, and cancers. Its clinical value in treating ENL derives from its TNF-a inhibitory activity. Specifically, it inhibits TNF-a protein expression at the post-transcriptional level by facilitating turnover of the mRNA (Sampaio *et al.*, 1991 & 1993; Moreira *et al.*, 1993). More recent research has shown similar inhibitory action of COX2 protein expression (Fujita *et al.*, 2001). These actions are mediated post-transcriptionally via AU-rich elements found in the 3' untranslated regions (3' – UTRs) of each mRNA (Kruys *et al.*, 1994; Chen *et al.*, 1995). Thalidomide's anti-angiogenesis activity derives from its inhibitory actions on basic fibroblast growth factor (bFGF) and vascular endothelial growth factor (VEGF) (D'Amato *et al.*, 1994; Figg *et al.*, 2002). The agent, additionally, acts as an inhibitor of the transcription factor, NFkB and a co-stimulator of both CD8+ and CD4+ T cells (Haslett *et al.*, 1998). However, the action of thalidomide to lower TNF-a levels and inhibit angiogenesis is not particularly potent and it therefore represents an interesting lead compound for medicinal chemistry.

Novel structural modification of thalidomide was achieved towards the discovery of original and potent isosteric analogues. The present invention relates to thalidomide analogues and, in particular, thiothalidomides (sulfur-containing thalidomide analogues), methods of synthesizing the analogues, and methods for using the analogues to modulate TNF-α and angiogenesis activities in a subject. Disclosed analogues potently inhibited TNF-α secretion, compared to thalidomide, via post-transcriptional mechanisms that decreased TNF-α mRNA stability via its 3′–UTR (Zhu *et al.*, 2003). Actions to inhibit angiogenesis were determined in widely accepted ex vivo assays.

Methods and Compositions for Treating Diseases and Disorders Associated With Natural Killer T-Cells

John R. Ortaldo, Robert H. Wiltrout (NCI)

U.S. Provisional Application No. 60/488,339 filed 17 Jul 2003 (DHHS Reference No. E–282–2002/0–US–01)

Licensing Contact: Catherine Joyce; 301/435–5031; *joycec@mail.nih.gov.*

The invention relates to the discovery that C12 beta-D-galactosyl ceramide may be used to deplete or inactivate NKT cell populations. These findings suggest methods for using C12 beta-D-galactosyl ceramide to treat conditions that would benefit from depletion of NKT cells, such as certain auto-immune diseases (*e.g.* lupus, MS) and AIDs.

The presence of NKT cells can be associated with either beneficial effects or pathology. Deficiencies in NKT cells are associated with at least some types of autoimmune disease, including type 1 diabetes and autoimmune gastritis in mice. In contrast, NKT cells augment autoantibody secretion and lupus development in lupus-prone mouse models and therefore lupus patients may benefit from the depletion of NKT cells. The remission state of multiple sclerosis (MS) is also associated with decreased levels of NKT cells, suggesting NKT cell depletion as a method of treatment for MS.

The above-mentioned invention is available for licensing on an exclusive or a non-exclusive basis.

Leu574 of HIF–1alpha as a Molecular Basis for Therapeutic Application

L. E. Huang (NCI)

U.S. Provisional Application No. 60/465,565 filed 25 Apr 2003 (DHHS Reference No. E–281–2002/0–US–01)

Licensing Contact: Catherine Joyce; 301/435–5031; *joycec@mail.nih.gov.*

The hypoxia-inducible factor 1 (HIF–1) is a transcription factor that plays a pivotal role in cellular adaptation to oxygen availability. HIF–1alpha protein is a subunit of HIF–1. Although the gene for HIF–1alpha is constitutively expressed, it is an extremely short-lived protein under normoxic conditions and is targeted for destruction via the proteosome pathway by an E3 ubiquitin ligase (the VHL protein).

The invention relates to the discovery that mutations or deletions of Leu574 result in a more stable form of HIF–1alpha. Therefore, the invention relates

to methods and compositions for modulating oxygen homeostasis for therapeutic application. In one aspect, the inventors contemplate the use of a more stable form of HIF–1alpha protein for therapeutic angiogenesis purposes such as may be useful in ischemic vascular disease. In another aspect, the inventors contemplate the use of this particular site in a screen for targeted drugs that modulates HIF–1alpha activity. The inventors also suggest that Leu574 could be used for developing drugs targeted to HIF hydroxylase binding, thereby altering HIF–1alpha stability.

This technology is available for licensing on an exclusive or a non-exclusive basis.

Vasostatin as Marrow Protectant

Giovanna Tosato *et al.* (NCI)

U.S. Patent No. 6,596,690 B2 issued 22 Jul 2003 (DHHS Reference No. E–230–2000/0–US–01); U.S. Patent Application No. 10/405,588 filed 01 Apr 2003 (DHHS Reference No. E–230–2000/0–US–02)

Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@mail.nih.gov.*

This patent relates to the stimulation of hematopoiesis, more specifically to the protection of hematopoietic stem cells from toxic agents, including chemotherapeutic agents and/or irradiation. The subject patent discloses specific fragments of vasostatin, and their application as stimulants of hematopoiesis in vitro and in vivo. Also disclosed is a method for stimulating the proliferation/survival of hematopoietic cells exposed to a chemotherapeutic agent or irradiation using these fragments. In one embodiment, a method is disclosed for stimulating the growth or survival of hematopoietic stem cells with a fragment of vasostatin, in the presence of a growth factor.

Dated: December 11, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31328 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Microfluidic Flow-Through Immunoassay for a Simultaneous Detection of Multiple Proteins in a Sub-Microliter Biological Sample

Nicole Y. Morgan *et al.* (NIH/NIST)

DHHS Reference No. E–024–2004/0–US–01 filed 30 Oct 2003

Licensing Contact: Michael Ambrose; 301/594–6565; *ambrosem@mail.nih.gov.*

This invention presents a high throughput, multi-analyte microfluidic chip device. This device can be used for the detection and characterization of proteins, immuno-affinity assays as well as analyte detection in biological samples or other media. The sub-microliter volumes for use make this device applicable where biological samples are rare and difficult to obtain.

The device consists of a series of channels that are connected via communication ports for sample flow. The channels can be individually loaded with detection reagents via portals at their ends. As such, the assay channels can be run in series using a single sample source or individually via the loading ports, thus increasing the utility of the microchip device. Each channel can then be detected via colorimetric, fluorimetric or other detection method as desired. The chip can be integrated into multiple detection devices or other analytical equipment.

The chip as designed, is manufactured using photolithographic etching, thus the number and size of the individual reaction channels can be modified to increase the number of channels or the volume the channels can hold. The chip should also be reusable, thus further increasing the utility of the device.

Method for Analysis of Biomarkers Concentrated With Biomarker Attractants

Arpita Mehta *et al.* (NCI)

DHHS Reference No. E–167–2003/0–US–01 filed 08 Oct 2003

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov.*

Biological fluids are the repositories of vast number of molecules that are excreted or otherwise shed by cells. These molecules present in biological fluids reflect the physiological and pathological states of the cells that are in contact by the fluids or the cells from which these molecules are derived. A major goal of clinical diagnostics is to correlate the particular molecules (biomarkers) present in biological fluids with particular disease states.

The present invention relates to analysis of molecules present in biological fluids. Specifically, it discloses a diagnostic method for isolating/analyzing biomarker attractant molecules for the presence of bound fragments of cellular proteins that are known to correlate with particular biological states in specific anatomic or physiologic locations.

Regulation of RNA Stability

Wi Lai *et al.* (NIEHS)

U.S. Provisional Application No. 60/451,976 filed 06 Mar 2003 (DHHS Reference No. E–314–2002/0–US–01)

Licensing Contact: Jesse S. Kindra; 301/435–5559; *kindraj@mail.nih.gov.*

This invention relates to the discovery that tristetraprolin (TTP) can promote the poly(A)RNase (PARN) mediated deadenylation of polyadenylated substrates containing AU-rich elements (AREs). As one aspect of the invention, the inventors have developed a cell free system that may be used for the purposes of assessing the effects of the various system components or their derivatives (*i.e.* AREs, PARN, or TTP) on the deadenylation process or the effects of various test agents on the deadenylation process. Aspects of this work have been published as follows: Lai *et al.*, 2003, Tristetraprolin and Its Family Members Can Promote the Cell-Free Deadenylation of AU-Rich Element-Containing mRNAs by Poly(A) Ribonuclease, MCB 23(11):3798–3812.

This technology is available for licensing on an exclusive or a non-exclusive basis.

Methods for Assessing the Ability of HIV Patients To Restrict HIV Replication

Mark Connors, Stephen Migueles (NIAID)

U.S. Provisional Application No. 60/412,020 filed 20 Sep 2002 (DHHS Reference No. E–260–2002/0–US–01); PCT Application No. PCT/US03/29549 filed 22 Sep 2003 (DHHS Reference No. E–260–2002/0–PCT–02)

Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

One of the current obstacles for the design and testing of effective vaccines and immunotherapies of HIV is the lack of in vitro correlates that will predict the ability to restrict virus replication. This invention relates to methods for evaluating the effectiveness of HIV therapies and vaccines and methods for assessing the ability of HIV patients to restrict virus replication. Upon restimulation of CD8+ T cells, the expression of perforin in these cells, and the cell cycle stage of these cells may be measured and used as in vitro markers for monitoring the patient's ability to restrict HIV replication and the effectiveness of the therapies and vaccines applied. Significant proliferation of CD8+ T cells, the presence of perforin in these cells, and the ability of these cells to progress beyond the G1 stage signify the patient's ability to restrict HIV replication and a favorable effect of the therapies or vaccines. These methods may be advantageously applied in conjunction with other measurements of HIV specific immune response such as HLA tetramers.

gp64 Pseudotyped Vectors and Uses Thereof

Mukesh Kumar, Joshua Zimmerberg (NICHD,

U.S. Provisional Application No. 60/425,853 filed 12 Nov 2002 (DHHS Reference No. E–191–2001/0–US–01); PCT Application filed 10 Nov 2003 (DHHS Reference No. E–191–2001/0–PCT–02)

Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

This invention relates to a general gene therapy technology which uses an HIV–1 based vector containing a baculovirus gp64 protein. HIV–1 based gene therapy vectors hold great promise due to their ability to deliver genes to non-dividing cells including hematopoietic stem cells. However native HIV only binds to cells with a CD4 receptor, while gene therapy vectors would need to be delivered to a variety of cells. Various different envelope proteins have been tried to replace the native envelope protein of HIV with a new envelope protein whose origin is another enveloped virus (pseudotyping) that has more general binding capabilities. However, to date, no one has been successful for practical purposes, due to either low titers or cytotoxic effects of the expressed proteins. The inventors have developed a family of nontoxic vectors using baculovirus gp64 protein (which binds to a variety of cells) and HIV proteins that efficiently deliver genes of interest to target cells. Furthermore, since gp64 expression in producer cells is not accompanied by cytotoxic side effects, this protein is an ideal candidate for the development of cell lines for constitutive expression of gp64 for the process of construction of the hybrid HIV (packaging cell lines).

Dated: December 11, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31329 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Prospective Investigation of Pulmonary Embolism Diagnosis III.

Date: February 11, 2004.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Arthur N. Freed, PhD, Review Branch, Room 7186, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892. (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: December 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31318 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Aldosterone Antagonists for the Treatment of Heart Failure with Preserved Sytolic Function.

Date: January 28, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Patricia A Haggerty, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, MSC 7924, Bethesda, MD 20892. 301/435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: December 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31319 Filed 12–18–03; 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 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 8, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Washington, DC 20015.

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31320 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

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 Council on Aging.

Date: February 3–4, 2004.

Closed: February 3, 2004, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: February 4, 2004, 8 a.m. to 2 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: February 4, 2004, 2 p.m. to 2:30 p.m.

Agenda: To review and evaluate program documents.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892. 301–496–9322.

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: *http://www.nih.gov/nia/naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS.)

Dated: December 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31317 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Zenapax (Humanized Antibody Against the IL–2 Receptor Alpha Chain) as a Novel Treatment for Multiple Sclerosis

AGENCY: National Institutes of Health, Public Health Services, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. provisional patent application 60/393,021 (DHHS ref. no. E–143–2002/0–US–01) filed June 28, 2002, international PCT application PCT/US02/38290 (DHHS ref. no. E–143–2002/0–PCT–02), international PCT application PCT/US03/20428 (DHHS ref. no. E–143–2002/0–PCT–04), and United States Patent Application Serial No. 10/607,598 (DHHS ref. no. E–143–2002/0–US–03), all entitled, ''Zenapax (Humanized Antibody Against the IL–2 Receptor Alpha Chain) As A Novel Treatment for Multiple Sclerosis,'' and all corresponding foreign patent applications to Protein Design Laboratories, of Fremont, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide. The field of use may be limited to the treatment of multiple sclerosis using monoclonal antibodies against the interleukin-2 receptor.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before February 17, 2004 will be considered.

ADDRESSES: Requests for copies of the patent(s)/patent application(s), inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Catherine M. Joyce, Intellectual Property Management Specialist, Office of Technology Transfer, National Institutes

of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301–435–5031; Facsimile 301–402–0220; email *joycec@mail.nih.gov.*

Technology Brief: The above-referenced patent(s)/patent application(s) relate to the discovery that a humanized antibody to the interleukin-2 receptor alpha chain (IL–2Rα) (humanized anti-Tac antibody), dacluzimab, is effective in treating multiple sclerosis (MS). In particular, it has been discovered that patients who failed to respond to therapy with interferon-beta showed dramatic improvement when treated with dacluzimab, with patients showing both a reduction in the total number of lesions and cessation of appearance of new lesions during the treatment period.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 10, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–31326 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: ''Methods of Making, Using and Pharmaceutical Formulations Comprising 7α, 11β-dimethyl-17β-hydroxyestra-4,14-dien-3-one and 17 Esters Thereof and 17 Esters of 7α-methyl-17β-hydroxylestra-4,14-dien-3-one''

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: USSN 60/193,530 and USSN 60/194,440, converted into combined PCT Application, PCT/US01/10293, and national stage filed in the U.S., Canada, Australia, Europe and Japan. A PCT–CIP was also filed and given a PCT Application Number of PCT/US02/09886, followed by national stage filings in the U.S., Canada, Australia, Europe, and Japan. The potential licensee is Torotech, LLC, having a place of business in the State of Maryland. The field of use may be limited to the therapeutic treatment of hypogonadism and human reproduction therapy. The United States of America is the assignee of the patent rights in this invention. This announcement is the first notice to grant an exclusive license to this technology.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before February 17, 2004 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Marlene Shinn-Astor, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4426; Facsimile: (301) 402–0220; e-mail: *MS482M@NIH.GOV.*

SUPPLEMENTARY INFORMATION: This technology relates to compounds that possess potent androgenic activity. These compounds offer a potential therapeutic benefit in the treatment of hypogonadism, regardless of cause, as an adjuvant in hormone replacement therapy for both men and women and for androgen stimulation of anabolism in a broad spectrum of disease entities involving debilitation.

These compounds are far more active and retain their potency after oral administration more than that achieved with the current oral androgen standard, methyltestosterone. An additional expected benefit is that liver toxicity, if any, should be minimal because 7α, 11β-dimethyl-17β-hydroxy-4-estren-3-one bucyclate is not alkylated at the C17 position.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 12, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31325 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Postnatal Stem Cells and Uses Thereof

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: PCT application number PCT/US03/12276 filed April 19, 2003 entitled, ''Postnatal Stem Cells and Uses Thereof'' to Dentigenix, having a place of business in the State of Washington. The field of use may be limited to the treatment of dental regeneration. The United States of America is the assignee of the patent rights in this invention. This announcement is the first notice to grant an exclusive license to this technology.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before February 17, 2004 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries,

comments and other materials relating to the contemplated license should be directed to: Marlene Shinn-Astor, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4426; Facsimile: (301) 402–0220; e-mail: *MS482M@NIH.GOV.*

SUPPLEMENTARY INFORMATION: This technology encompasses human postnatal deciduous dental pulp stem cells commonly known as ''baby teeth'', that are used to create dentin and have been shown to differentiate into cells of specialized function such as neural cells, adipocytes, and odontoblasts. It is believed that these cells could be manipulated to repair damaged teeth, induce the regeneration of bone, and treat neural injury or disease.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 12, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31324 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Submission for OMB Emergency Review; Reinstatement With Change for Previously Approved Information Collection Request (Product and Service Information Site)

AGENCY: Office of the Under Secretary for Management, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS), has resubmitted OMB 1600–0001 information collection request (ICR) (Product and Service Information Site) for reinstatement with change for a previously approved collection, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106). OMB approval has been requested by December 22, 2003.

ADDRESSES: Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Homeland Security, Office of Management and Budget, Room 10235, Washington, DC 20503; telephone (202) 395–7316. The Office of Management and Budget is particularly interested in comments which:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by calling Yvonne Pollard, Program Analyst and Paperwork Reduction Act Contact, Office of the Chief Information Officer, Department of Homeland Security, Washington, DC 20528; telephone (202) 692–4221.

SUPPLEMENTARY INFORMATION:

Analysis

Agency: Department of Homeland Security, Under Secretary of Management, Office of the Chief Information Officer.

Title: Product and Service Information Site.

OMB Number: 1600–0001.

Frequency: On occasion.

Affected Public: Individuals or households; businesses or other for-profit; not-for-profit institutions; farms, State, local or tribal government.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 30 minutes for startup; 30 minutes for maintaining.

Total Burden Hours: 20,000.

Total Burden Cost: (capital/startup): $25.00 per respondent; $500,000 annually.

Total Burden Cost: (operating/maintaining): $25.00 per respondent, $500,000 annually.

Description: The Product and Service Information site is a supplement of the Central Contractor Registration database that will provide a uniform voluntary way for companies to provide descriptions of their product-and-service ideas to DHS for enhancing homeland security.

Dated: December 16, 2003.

Steve Cooper,

Chief Information Officer.

[FR Doc. 03–31438 Filed 12–17–03; 1:28 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

Action: 30-day notice of information collection under review: Petition for Nonimmigrant Worker; Form I–129.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (CIS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 22, 2003 at 68 FR 43364, allowing for emergency OMB review and a 60-day public comment period. No comments were received by the CIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 20, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget,

Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This form is used to petition for temporary workers and for the admission of treaty traders and investors. It is also used in the process of an extension of stay or for a change of nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 2 hours 45 minutes (2.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,014,607 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: December 12, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services.

[FR Doc. 03–31285 Filed 12–18–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

Action: 30-day notice of information collection under review: Health and Human Services Statistical Data for Refugee Asylee Adjusting Status; Form I–643.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (CIS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 25, 2003 at 68 FR 55404, allowing for a 60-day public comment period. No comment was received by the CIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 20, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension without change of a currently approved information collection.

(2) *Title of the Form/Collection:* Health and Human Services Statistical Data for Refugee Asylee Adjusting Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–643, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is necessary for the CIS to comply with Section 412(a)(8) of the INA which requires the Office of Refugee Resettlement Report to compile a summary and evaluation of the collection information. The CIS is required to report on the status of refugees at the time of adjustment to lawful permanent resident.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 32,370 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or

additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: December 12, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services.

[FR Doc. 03–31287 Filed 12–18–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: Proposed Collection; Comment Request

Action: 30-day notice of information collection under review: Application—Checkpoint Pre-enrolled Access Lane; Form I–866.

The Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), has submitted the following information collection request in the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 25, 2003 at 68 FR 55407. The notice allowed for a 60-day public comment period. The DHS has received no public comment on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 20, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Room 10235, 725–17th Street, NW., Washington, DC 20530. You may fax comments to the OMB at 202–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application-Checkpoint Pre-enrolled Access Lane.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–866. U.S. Customs and Border Protection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary individual or households. The information collected on this form will be used by the DHS to determine eligibility for participation in the Checkpoint Pre-enrolled Access Lane (PAL) program for persons and vehicles at immigration checkpoints within the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,500 responses at 32 minutes (53 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,625 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of the Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: December 12, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Immigration and Custom Enforcement.

[FR Doc. 03–31286 Filed 12–18–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–51]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 11, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–31040 Filed 12–18–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–29]

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of the establishment of a new system of records.

SUMMARY: Pursuant to the provision of the Privacy Act of 1974 (5 U.S.C. 552a), HUD is giving notice that it proposes to establish a new system of records entitled the ''Single Family Neighborhood Watch Early Warning System'' (NW). HUD staff and lenders use NW to monitor default and claim rates on FHA insured loans for FHA-approved lenders and FHA programs. The system includes records from individuals who have obtained a mortgage insured under HUD/FHA's single-family mortgage insurance programs. It also includes records from individuals involved in the HUD/FHA single-family loan origination process. Specifically, records contained in the system include borrowers' name, property address, Social Security Number or other identifying numbers. NW is a Web-based query tool that displays summary and loan level origination, default and claim information by originating, sponsoring, principal, and agent lenders for two-year periods by beginning amortization date for FHA insured loans, etc.

DATES: *Effective Date:* This proposal shall become effective without further notice on January 20, 2004, unless comments are received on or before that date which would result in a contrary determination.

Comments Due Date: January 20, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0050. Communications should refer to the above docket number and title. Comments submitted by facsimile (Fax) will not be accepted. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act Information: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374. For Housing, Single Family Neighborhood Watch Early Warning System information, Phillip Murray, Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room B–133, Washington, DC 20410–8000; telephone (202) 708–1515 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number via TTY by calling the toll-free Federal Information Relay Services at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: HUD's Office of Lender Activities and Program Compliance (LAPC) is responsible for monitoring FHA approved lenders to ensure that they follow HUD guidelines when they originate, sponsor, and/or service FHA insured loans. In addition, LAPC is responsible for implementing HUD's Credit Watch Termination initiative that allows HUD to terminate the origination approval agreement of lender branches whose default and claim rate exceeds the field offices default and claim rate by 200% or more. HUD staff use NW to target FHA approved lenders for on-site monitoring reviews and to evaluate lender performance relative to HUD's Credit Watch Termination initiative. HUD also uses the Appraiser performance information that is currently only available to HUD staff, to evaluate Appraiser performance.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: December 4, 2003.

Gloria R. Parker,

Chief Technology Officer.

HUD/HS–16

SYSTEM NAME:

Single Family Neighborhood Watch Early Warning System (NW).

SYSTEM LOCATION:

The system's databases and coldfusion code are located in Lanham, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have obtained a mortgage insured under HUD/FHA's single-family mortgage insurance programs. Additionally, individuals involved in the HUD/FHA single-family loan origination process.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of the borrower's name, property address, Social Security Number or other identification number (ID). Also included in the records is originating, sponsoring, holder and servicer lender ID and name, mortgage amount, interest rate, front and back ratios, FHA ADP code, loan purpose, gift source and amount, loan closing and endorsement dates, default status, default reason, default date, post endorsement technical review ratings, underwriter ID and name, appraiser ID and name, HUD indemnification information, and other data fields associated with an FHA Case Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 203, National Housing Act, Pub. L. 73–479.

PURPOSE(S):

NW enables HUD staff and lenders to monitor the default and claim rates on FHA insured loans for FHA-approved lenders and FHA programs. NW is designed to highlight exceptions—lenders, programs, loan characteristics and geographic areas with unusual originations or high defaults and claims on FHA insured loans. The loan level information is password protected and can only be viewed by HUD staff with a need to know and lenders who were the originator, sponsor, holder, or servicer on the loan.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include:

(a) To FHA approved mortgage institutions to monitor the default and claim rates on FHA insured loans. Mortgage institutions can only view the loan level information where they were the originator, sponsor, holder, or servicer on the loan.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NW records are stored on a Sybase 12.5 server HLANUDP001 in the database sfapps and on Sybase IQ server HUDDW database sfdw.

RETRIEVABILITY:

Records are retrieved by a manual or computer search on the number of originations, default, and defaults and claims from the Early Warnings menu option, by computer search on the counts in the Loss Mitigation—Current Defaults Reported display from the Servicing menu option, and by accessing the Late Endorsement, Pipeline/Uninsured, the Default Report by Servicer queries. Entering an FHA Case Number from the Case Status Query feature also retrieves case level detail.

SAFEGUARDS:

Automated records are maintained in secured areas. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Neighborhood Watch retains up to 13 quarter end dates of two years of summary originations data, and three quarter end dates of loan level data.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Quality Assurance Division, HULQ, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 7th Street SW., Washington, DC. Written requests must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) in relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A; (ii) in relation to appeals of initial denials, the HUYD Department Privacy Appeals Officer, Office of General Counsel Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Information may be collected from HUD, program participants, and subject individuals.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–31276 Filed 12–18–03; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ER–CACA–44491]

Notice of Availability of the Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Imperial Irrigation District's Desert Southwest Transmission Line Project, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, 42 U.S.C 4321–4347, and title 40 CFR part 1500, the Bureau of Land Management (BLM) hereby gives notice that the draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Imperial Irrigation District's (IID) Desert Southwest Transmission Line Project is available for public review and comment. This project may involve an amendment to the applicable BLM land use plan: The California Desert Conservation Area (CDCA) Plan of 1980, as amended.

DATES: Comments will be accepted until 90 days have elapsed after publication of a notice of availability of this document, in the **Federal Register**, by the Environmental Protection Agency (EPA).

ADDRESSES: If you wish to comment, you may submit your comments by any of several methods. You may mail comments to: James G. Kenna, Field Manager; Bureau of Land Management, Palm Springs—South Coast Field Office, P.O. Box 581260, North Palm Springs, CA 92258.

You may also comment via the Internet to *dgomez@ca.blm.gov*. Please include in the subject line: ''Draft EIS/ EIR, Desert Southwest Transmission Line Project'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact Diane Gomez at (760) 251–4852. You may also hand-deliver comments to: Bureau of Land Management, Palm Springs-South Coast Field Office, 690 W. Garnet Avenue, North Palm Springs, CA 92258.

Oral comments will be accepted at any of three public meetings to be held during the month of November 2003. These meetings will be held in El Centro, Blythe, and North Palm Springs, California. Notices published in local media will be provided at least 15 days prior to the scheduled public meetings.

Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review, or from disclosure under the Freedom of Information Act, the first line of the comment should start with the words 'CONFIDENTIALITY REQUESTED' in uppercase letters in order for BLM to comply with your request. Such request will be honored to the extent allowed by law. Comment contents will not be kept confidential. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Diane Gomez at (760) 251–4852 or e-mail: *dgomez@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: A copy of the draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Imperial Irrigation District's Proposed Desert Southwest Transmission Line Project is available for review via the Internet at *http://www.ca.blm.gov/palmsprings*. Electronic (on CD–ROM) and paper copies may also be obtained by contacting Diane Gomez at the aforementioned addresses and phone number.

The IID is proposing to construct a 230 or 500 kilovolt (kV) electrical transmission line located parallel and adjacent to Interstate Highway 10 between North Palm Springs and Blythe, California, a distance of approximately 118 miles. Four alternatives to the proposed project are being considered in this EIS/EIR. These alternatives are consistent with the California Desert Conservation Area (CDCA) Plan of 1980, as amended, with the exception of Alternative B. This alternative is located partially outside of designated utility corridors under the CDCA Plan and would; if selected, require an amendment to this land use plan.

The BLM, together with the IID, have jointly prepared this draft EIS/EIR. The BLM is the lead Federal agency for the preparation of this EIS/EIR in compliance with the requirements of the National Environmental Policy Act

(NEPA). The IID is the lead State of California agency for the preparation of this EIS/EIR in compliance with the requirements of the California Environmental Quality Act (CEQA).

Dated: September 29, 2003.

John R. Kalish,

Acting Field Manager.

[FR Doc. 03–31101 Filed 12–18–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–1610–DO–030E]

Notice of Intent To Prepare a Resource Management Plan for the Butte Field Office and Associated Environmental Impact Statement

AGENCY: Butte Field Office, Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare a Resource Management Plan (RMP) for the Butte Field Office and associated Environmental Impact Statement (EIS).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an RMP with an associated EIS for the Butte Field Office. The planning area is located in Beaverhead, Broadwater, Deer Lodge, Gallatin, Jefferson, Lewis and Clark, Park, and Silver Bow Counties, Montana. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria, including an evaluation of the existing RMP in the context of the needs and interests of the public.

DATES: This notice initiates the public scoping process. Formal scoping will end February 17, 2004; however, collaboration with the public will continue throughout the process. Comments on issues and planning criteria can be submitted in writing to the address listed below. All public meetings will be announced through the local news media, newsletters, and the BLM Web site (*http://www.mt.blm.gov/bdo*) at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, public meeting locations will be rotated among the towns of Boulder, Bozeman, Butte, Helena, Townsend, and Wise River. Early participation is encouraged and will help determine the future management of the Butte Field Office public lands. In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the BLM Draft RMP/EIS.

ADDRESSES: Written comments should be sent to Bureau of Land Management, Ruth Miller, RMP Project Manager, Butte Field Office, 106 North Parkmont, Butte, MT, 59701; Fax;—(406) 533–7660. Documents pertinent to this proposal may be examined at the Butte Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Butte Field Office during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Ruth Miller, on (406) 533–7645, Bureau of Land Management, RMP Project Manager, Butte Field Office, 106 North Parkmont, Butte, MT, 59701.

SUPPLEMENTARY INFORMATION: The lands within the Butte Field Office are currently being managed according to the 1984 Headwaters RMP. In 1983, while the Headwaters RMP was being developed, the Butte and Lewistown Districts (now called Field Offices) adjusted their jurisdictional boundaries (as well as the Dillon Resource Area and Headwaters Resource Area within the Butte District). This resulted in lands covered by the Headwaters RMP being managed by both Districts.

The BLM lands in the following areas are now being managed by the Lewistown Field Office and will not be covered in the Butte RMP process: Pondera, Teton, Cascade, Meagher, and the north half of Lewis and Clark County. Also, the BLM lands within Silver Bow and Deerlodge Counties (and a small portion of Beaverhead County along the Big Hole River) were included in the Dillon Resource Area Management Framework Plan (MFP) of 1979 and will now be covered in this Butte RMP revision.

Because this RMP will follow the existing Butte Field Office boundary, the name of the RMP will be the Butte RMP. This will help separate the new document from the existing Headwaters RMP, and from the Lewistown portion that will still be managed under the Headwaters RMP until its revision.

The RMP revision to be prepared for the public lands administered by the Butte Field Office will identify goals, objectives, standards and guidelines for management of a variety of resources and values. The plan will specify actions, constraints, and general management practices necessary to achieve desired conditions. The plan will also identify any areas requiring special management such as ACECs. The scope of the RMP will be comprehensive. Certain existing standards and guidelines and other BLM plans will be incorporated into the RMP.

The changing needs and interests of the public necessitate a revision to the Butte Field Office RMP. Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The major issue themes that will be addressed in the RMP effort include: (1) Management of vegetation; (2) conservation and recovery of special status species; (3) water quality, quantity, and aquatic species; (4) travel management and access to public lands; (5) management of areas with special values; (6) availability and management of public lands for commercial uses; and (7) land tenure adjustments.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided for each issue placed in categories two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan.

The public is encouraged to help identify these questions and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in minerals and geology, forestry, range, fire and fuels, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics.

The following planning criteria have been proposed to guide development of the plan, avoid unnecessary data collection and analyses, and to ensure the plan is tailored to the issues. Other criteria may be identified during the public scoping process. After gathering comments on planning criteria, the BLM will finalize the criteria and provide feedback to the public on the criteria to be used throughout the planning process.

- The plan will be completed in compliance with FLPMA and all other applicable laws.
- The planning process will include an EIS that will comply with NEPA standards.
- The plan will establish new guidance and identify existing guidance upon which the BLM will rely in managing public lands within the Butte Field Office.
- The RMP/EIS will incorporate by reference the *Standards for Rangeland Health and Guidelines for Livestock Grazing Management,* the *Off-Highway Vehicle EIS and Plan Amendment for Montana, North Dakota, and Portions of South Dakota;* and, when signed, the *Montana/Dakotas Statewide Fire Management Plan*.
- The RMP/EIS will incorporate by reference all prior Wilderness designations and Wilderness Study Area findings that affect public lands in the planning area.
- The plan will result in determinations as required by special program and resource specific guidance detailed in Appendix C of the BLM's Planning Handbook.
- The plan will recognize the State's responsibility to manage wildlife populations, including uses such as hunting and fishing, within the planning area.
- Decisions in the plan will strive to be compatible with the existing plans and policies of adjacent local, State, tribal, and Federal agencies as long as the decisions are in conformance with legal mandates on management of public lands.
- The scope of analysis will be consistent with the level of analysis in approved plans and in accordance with Bureau-wide standards and program guidance.
- Resource allocations must be reasonable and achievable within available technological and budgetary constraints.
- The lifestyles and concerns of area residents will be recognized in the plan.

The BLM is also requesting public input for nominations considered worthy of ACEC designation. To be considered as a potential ACEC, an area must meet the criteria of relevance and importance as established and defined in 43 CFR 1610.7–2. Nominations must include descriptive materials, detailed maps, and evidence supporting the ''relevance'' and ''importance'' of the resource or area. There is currently one ACEC within the Butte FO boundary; the Sleeping Giant ACEC in Lewis and Clark County was designated by the Headwaters RMP in 1984. All ACEC nominations within the planning area will be evaluated during development of the RMP.

Dated: September 12, 2003.

Richard M. Hotaling,

Field Office Manager.

[FR Doc. 03–28963 Filed 12–18–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT080–1310–00]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) on the Greater Deadman Bench Oil and Gas Producing Region Field Development Project, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Vernal Field Office, Vernal, Utah, will prepare an Environmental Impact Statement (EIS). The EIS will focus on Questar Exploration and Production Company's (QEP) proposed gas and oil development on about 99,000 acres in the Greater Deadman Bench oil and gas production region.

DATES: Public scoping comments will be accepted on or before February 4, 2004. A public scoping open house and information meeting will be held on January 14, 2004 from 7–9 p.m., at the Uintah County Commission Chambers, 147 E Main Street, Vernal, Utah. If you have any information, data, concerns, or suggestions related to the potential impacts of the proposed action, including the issues identified above, please submit them to the address listed below.

SUPPLEMENTARY INFORMATION: The project area, located about 20 miles south of Vernal, Utah, involves about 85% BLM-administered lands (83,864 acres); 12% (11,448 acres) State of Utah-administered lands; and, 3% (3,473 acres) patented land. Currently 278 oil and water-injection wells and about 300 gas wells with their attendant service roads exist within the project area. The proponent anticipates the drilling of up to 1239 new wells over a period of 10 years, or until the resource base is fully developed. Of these new wells, 826 would be new locations and 470 would be twins drilled from existing locations (representing 38% of the total new wells that would be drilled). Required infrastructure includes electric power lines, roads, oil and gas flow lines and pipelines, well pads (with pumping units for oil wells), central facilities, water injection facilities, gas treatment and compression facilities. Gas would be transported via pipeline to centralized compression and treatment facilities. Produced water would be trucked or piped to one of several existing QEP water injection plants where it would be re-injected into the oil reservoir or disposal zone via an injection well system.

Major issues at this time include potential impacts on desert and semi-desert ecosystems and their dependent wildlife species (including antelope, sage grouse, white-tailed prairie dog colonies and their associated species), vegetation (including noxious weeds and reclamation), riparian habitat associated with the Green River corridor. Alternatives identified at this time include the proposed action and the no action alternatives.

FOR FURTHER INFORMATION CONTACT: Jean Nitschke-Sinclear, (435) 781–4437 or e-mail: *jean_nitschke-sinclear@blm.*

ADDRESSES: Written scoping comments should be sent to: Field Manager, Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078, Attn: QEP Field Development Project.

Comments, including names and street addresses of respondents will be available for public review at the BLM Vernal Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be

published as part of the EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: October 9, 2003.

Gene Terland,

Associate State Director.

[FR Doc. 03–31123 Filed 12–18–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–04–1020–PH]

New Mexico Resource Advisory Council, Notice of Call for Nominations

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, New Mexico Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting dates are February 26–27, 2004, at Marbob Energy, 2208 West Main, Artesia, New Mexico, beginning at 8 a.m. both days. The meeting will adjourn at approximately 5 p.m. on Thursday and 11:30 a.m. on Friday. The three established RAC working groups may have a late afternoon or an evening meeting on Thursday, February 26, 2004

An optional field trip is planned for Wednesday, February 25, 2004. The public comment period is scheduled for Wednesday, February 25, from 6–8 p.m. at Marbob Energy, 2208 West Main, Artesia, New Mexico. The public may present written comments to the RAC.

Depending on the number of individuals wishing to comment and time available, oral comments may be limited.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. All meetings are open to the public. At this meeting, topics for discussion include: Otero Mesa Unitization working Group results, rehabilitation of the oil and gas legacy wells, oil and gas and cultural management in the Carlsbad Area, the Preferred Upstream Management Practices (PUMP) III Project (a cultural resources Geographic Information System database focused on oil and gas fields), update on noxious weeds program, access follow-up, and proposed RAC initiatives.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, (505) 438–7515.

Dated: December 15, 2003.

Linda S.C. Rundell,

State Director.

[FR Doc. 03–31284 Filed 12–18–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PH; GP4–0048]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Eastern Washington Resource Advisory Council (EWRAC) will meet on January 23, 2004, at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275.

SUPPLEMENTARY INFORMATION: The meeting will start at 9 a.m. and adjourn about 4 p.m. Topics on the meeting agenda include:

- Proposed Rule to Amend BLMs Livestock Grazing Regulations
- Fiscal Year 2004 Resource Advisory Council Work Plan
- Land Exchange Update

The RAC meeting is open to the public, and there will be an opportunity for public comments at 10:30 a.m.. Information to be distributed to Council members for their review is requested in written format 10 days prior to the Council meeting date.

FOR FURTHER INFORMATION CONTACT: Sandra Gourdin or Kathy Helm, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212, or call (509) 536–1200.

Dated: December 15, 2003.

Joseph K. Buesing,

District Manager.

[FR Doc. 03–31292 Filed 12–18–03; 8:45 am]

BILLING CODE 1550–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lake Berryessa Visitor Services Plan, Napa County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice for additional open house meeting on the Draft Environmental Impact Statement (DEIS).

SUMMARY: The Bureau of Reclamation will hold an additional open house on the DEIS for the Lake Berryessa Visitor Services Plan (VSP). The first open house was held on November 22, 2003. The public hearings will be held as originally planned on January 21, 2004. The notice of availability of the DEIS and notice of public workshop and notice of public hearings was published in the **Federal Register** on October 31, 2003 (68 FR 62097).

DATES: The additional open house will be held on Saturday, January 10, 2004 from 10 a.m. to 4 p.m. in Napa, CA.

The public hearings will be held on Wednesday, January 21, 2004 from 1 to 4 p.m. and 7 to 10 p.m.

ADDRESSES: The additional open house will be held at the Napa Valley Expo at the Reisling Hall, 575 3rd Street, Napa, CA.

The hearings will be held at the Solano County Fairgrounds, Exposition Hall, 900 Fairgrounds Drive, Vallejo, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Rodgers at 707–966–2111 x106, fax 707–966–0409, or e-mail: *srodgers@mp.usbr.gov.*

Dated: December 12, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–31291 Filed 12–18–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–501]

In the Matter of Certain Encapsulated Integrated Circuit Devices and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 17, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Amkor Technology, Inc. of West Chester, Pennsylvania. Letters supplementing the complaint were filed on December 2 and 9, 2003. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain encapsulated integrated circuit devices and products containing same by reason of infringement of claims 1–4, 7, 17, 18, and 20–23 of U.S. Patent No. 6,433,277; claims 1–4, 7 and 8 of U.S. Patent No. 6,630,728; and claims 1, 2, 13 and 14 of U.S. Patent No. 6,455,356. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on December 12, 2003, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain encapsulated integrated circuit devices or products containing same by reason of infringement of one or more of claims 1–4, 7, 17, 18, and 20–23 of U.S. Patent No. 6,433,277; claims 1–4, 7 and 8 of U.S. Patent No. 6,630,728; and claims 1, 2, 13 and 14 of U.S. Patent No. 6,455,356; and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Amkor Technology, Inc., 1345 West Enterprise Drive, West Chester, Pennsylvania 19380.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Carsem (M) Sdn Bhd, No. 2 Jalan Lapangan Terbang, 31350 Ipoh, Perak, Malaysia.

Carsem Semiconductor Sdn Bhd, Lot 52986, Taman Meru Industrial Estate, 30020 Jelapang, Ipoh, Perak, Malaysia.

Carsem, Inc., 17890 Castleton Street, Suite 245, City of Industry, California 91748.

(c) David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: December 15, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–31252 Filed 12–18–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1057 (Preliminary)]

Certain Processed Hazelnuts From Turkey

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Turkey of certain processed hazelnuts, provided for in subheadings 0802.22.00 and 2008.19.20 of the Harmonized Tariff Schedule of the

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On October 21, 2003, a petition was filed with the Commission and Commerce on behalf of Westnut LLC, Dundee, OR; Northwest Hazelnut Co., Hubbard, OR; Hazelnut Growers of Oregon, Cornelius, OR; Willamette Filbert Growers, Newberg, OR; Evergreen Orchards, McMinnville, OR; and Evonuk Orchards, Eugene, OR, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain processed hazelnuts from Turkey. Accordingly, effective October 21, 2003, the Commission instituted antidumping duty investigation No. 731–TA–1057 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 28, 2003 (68 FR 61465). The conference was held in Washington, DC, on November 12, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 12, 2003. The views of the Commission are contained in USITC Publication 3656 (December 2003), entitled *Certain Processed Hazelnuts from Turkey: Investigation No. 731–TA–1057 (Preliminary).*

By order of the Commission.

Issued: December 15, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–31253 Filed 12–18–03; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,525]

Alcatel Internetworking (PE), Spokane, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of September 30, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on August 29, 2003. The notice was published in the **Federal Register** on September 17, 2003 (68 FR 54497).

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, grated.

Signed in Washington, DC this 14th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31297 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,751]

Cliffs Mining Services Company, Ishpeming, MI; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 10, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on October 10, 2003. The notice was published in the **Federal Register** on November 6, 2003 (68 FR 62832).

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 21st day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31304 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,538]

Custom Tool and Design, Inc., Erie, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 10, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on September 23 2003, and will

soon be published in the **Federal Register**.

The Department reviewed the request for reconsideration and has determined that sales and production did decline in the relevant period, and therefore, a survey of subject firm customers is merited to establish whether imports contributed to layoffs in the petitioning worker group.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 21st day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31303 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,474]

Kulicke and Soffa Industries, Austin, TX; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 16, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on September 24, 2003 and published in the **Federal Register** on November 6, 2003 (68 FR 62832).

The Department has reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 18th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31302 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,847]

Medsource Technologies, Newton, MA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 17, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on October 21, 2003 and published in the **Federal Register** on November 6, 2003 (68 FR 62833).

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information regarding an alleged shift of production to Mexico. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 2nd day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31305 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,242]

Polyone Corporation, O'Sullivan Plastic Division, Yerington, NV; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of June 27, 2003, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on May 5, 2003, and published in the **Federal Register** on May 19, 2003 (68 FR 27106).

The Department reviewed the request for reconsideration and has determined that the Department will conduct further surveys of customers provided by the company that were not indicated in the initial investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 21st day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31300 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,655]

Timeplex, LLC, a Division of Platinum Equity Holdings, Hackensack, New Jersey; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of July 3, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on June 10, 2003, and published in the **Federal Register** on June 19, 2003 (68 FR 36846).

The Department reviewed the request for reconsideration and has determined that a survey of subject firm customers is merited to establish whether imports contributed to layoffs in the petitioning worker group.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 21st day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31301 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Maintenance of Receipts for Benefits Paid by a Coal Mine Operator (CM–200). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 17, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Black Lung Benefits Act (FBLBA). Under 20 CFR 725.531, self-insured coal mine operators or insurance carriers must maintain receipts for black lung benefit payments made for five years after the date on which the receipt was executed. This requirement is designated as CM–200, Maintenance of Receipts for Benefits Paid by a Coal Mine Operator. There is no form or format for the receipts; a cancelled check will satisfy the requirement. This information collection is currently approved for use through June 30, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order that coal mine operators and insurers can provide evidence, as necessary, that payment to claimants has been made and received.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Maintenance of Receipts for Benefits Paid by a Coal Mine Operator.

OMB Number: 1215–0124.

Agency Number: CM–200.

Affected Public: Business or other for profit and State, local or tribal government.

Recordkeeping: On occasion.

Total Respondents: 140.

Total Responses: 140.

Estimated Total Burden Hours: 1.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 15, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–31296 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and

federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to the impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ030002 (Jun. 13, 2003)
NJ030003 (Jun. 13, 2003)
NJ030004 (Jun. 13, 2003)
NJ030005 (Jun. 13, 2003)
NJ030007 (Jun. 13, 2003)
NJ030009 (Jun. 13, 2003)

Volume II

Pennsylvania
PA030004 (Jun. 13, 2003)
PA030005 (Jun. 13, 2003)
PA030006 (Jun. 13, 2003)
PA030008 (Jun. 13, 2003)
PA030009 (Jun. 13, 2003)
PA030010 (Jun. 13, 2003)
PA030016 (Jun. 13, 2003)
PA030017 (Jun. 13, 2003)
PA030019 (Jun. 13, 2003)
PA030020 (Jun. 13, 2003)
PA030026 (Jun. 13, 2003)
PA030027 (Jun. 13, 2003)
PA030030 (Jun. 13, 2003)
PA030031 (Jun. 13, 2003)
PA030035 (Jun. 13, 2003)
PA030040 (Jun. 13, 2003)
PA030042 (Jun. 13, 2003)
PA030054 (Jun. 13, 2003)
PA030059 (Jun. 13, 2003)
West Virginia
WV030001 (Jun. 13, 2003)
WV030002 (Jun. 13, 2003)
WV030003 (Jun. 13, 2003)
WV030010 (Jun. 13, 2003)

Volume III

Kentucky
KY030003 (Jun. 13, 2003)
KY030029 (Jun. 13, 2003)

Volume IV

None

Volume V

New Mexico
NM030001 (Jun. 13, 2003)
NM030011 (Jun. 13, 2003)

Volume VI

None

Volume VII

Nevada
NV030003 (Jun. 13, 2003)
NV030005 (Jun. 13, 2003)

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

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Signed at Washington, DC this 11th day of December 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–31039 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0065(2004)]

Standard on Access to Employee Exposure and Medical Records (29 CFR 1910.1020), Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the existing burden-hour estimates, and to extend OMB approval of the information collection requirements of the regulation titled Access to Employee Exposure and Medical Records (29 CFR 1910.1020).

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or sent) by February 17, 2004.

Facsimile and electronic transmission: Your comments must be sent by February 17, 2004.

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0065(2004), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. ICR 1218–0065(2004), in your comments.

Electronic: You may submit comments, but not attachments, throughout the Internet at *http://ecomments.osha.gov/.*

II. Obtaining Copies of Supporting Statement for the Information Collection

The Supporting Statement for the information Collection is available for downloading from OSHA's Web site at *http://www.osha.gov.* The supporting statement is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the supporting statement can be obtained by contacting Todd Owen at (202) 693–2222

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). Under the authority granted by the OSH Act, OSHA published a health regulation governing access to employee exposure-monitoring data and medical records. This regulation does not require employers to collect any information or to establish any new systems of records. Rather, it requires that employers provide employees, their designated representatives, and OSHA with access to employee exposure-monitoring and medical records, and any analyses resulting from these records, whether or not the records are mandated by specific occupational safety and health standards. In this regard, the regulation specifies requirements for record access, record retention, employee information, trade-secret management, and record transfer. Accordingly, the Agency attributes the burden hours and costs associated with exposure monitoring and measurement, medical surveillance, and the other activities required to generate the data governed by the regulation to the health standards that specify these activities, therefore, OSHA did not include these burden hours and costs in this ICR.

Access to exposure and medical information enables employees and their designated representatives to become directly involved in identifying and controlling occupational health hazards, as well as managing and preventing occupationally-related health impairment and disease. Providing the Agency with access to the records permits it to ascertain whether or not employers are complying with the regulation, as well as the recordkeeping requirements of its other health standards; therefore, OSHA access provides additional assurance that employees and their designated representatives are able to obtain the data they need to conduct their analyses.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA proposes to decrease the existing burden-hour estimates, and to extend OMB approval of the information collection requirements of the Access to Employee Exposure and Medical Records Standard (29 CFR 1910.1020). The reduction is mainly a result of a reduction in the estimated number of establishments affected by this regulation.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Access to Employee Exposure and Medical Records Standard (29 CFR 1910.1020).

Type of Review: Extension of a currently-approved information collection requirement.

Title: Access to Employee Exposure and Medical Records (29 CFR 1910.1020).

OMB Number: 1218–0065.

Affected Public: Business or other for-profit organizations; Federal government; State, local, or tribal governments.

Number of Respondents; 717,268.

Frequency: On occasion.

Total Responses: 4,577,613.

Average Time per Response: Varies from 5 minutes (.08 hour) to 10 minutes (.17 hour).

Estimated Total Burden Hours: 561,308.

Estimated Cost (Operation and Maintenance): $0.

III. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed in Washington, DC on December 15, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–31288 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* January 6, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs the November 3, 2003 deadline.

2. *Date:* January 9, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2003 deadline.

3. *Date:* January 13, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2003 deadline.

4. *Date:* January 16, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 730.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2003 deadline.

5. *Date:* January 23, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 730.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2003 deadline.

6. *Date:* January 26, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Scholarly Editions in American History, submitted to the Division of Research Programs at the November 3, 2003 deadline.

7. *Date:* January 27, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Archaeology, submitted to the Division of Research Programs at the November 3, 2003 deadline.

8. *Date:* January 27, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 730.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2003 deadline.

9. *Date:* January 27, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Historical Societies, History Museums & Art Museums, submitted to the Office of Challenge grants at the November 3, 2003 deadline.

10. *Date:* January 28, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in The Americas, submitted to the Division of Research Programs at the November 3, 2003 deadline.

11. *Date:* January 29, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in American Culture, submitted to the Division of Research Programs at the November 3, 2003 deadline.

12. *Date:* January 29, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Colleges and Universities, submitted to the Office of Challenge Grants at the November 3, 2003 deadline.

13. *Date:* January 30, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 730.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2003 deadline.

14. *Date:* January 30, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Scholarly Editions II in American Studies, American Literature, and Philosophy, submitted to the Division of Research Programs at the November 3, 2003 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 03–31289 Filed 12–18–03; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Exelon Generation Company, LLC and Midamerican Energy Company; Quad Cities Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR 50.75(h)(2) for Facility Operating License Nos. DPR–29 and DPR–30, issued to Exelon Generation Company, LLC (Exelon) and MidAmerican Energy Company (MEC) (the licensee), for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed

The proposed is an exemption to the requirements of 10 CFR 50.75(h)(2), as requested by MEC by letter dated November 21, 2003. The proposed action would exempt MEC from compliance with requirements of the new regulation until MEC's amended nuclear decommissioning trusts are approved by the Illinois Commerce Commission.

The Need for the Proposed

The proposed exemption from 10 CFR 50.75(h)(2) is needed because MEC may not obtain approval of the amended nuclear decommissioning trusts from the Illinois Commerce Commission prior to December 24, 2003.

Environmental Impacts of the Proposed

The NRC has completed its safety evaluation of the proposed action and concludes that the proposed exemption will not present an undue risk to the public health and safety. The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the MEC approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Quad Cities Power Station, Units 1 and 2 dated September 1972 and the Draft Supplemental Environmental Impact Statement (NUREG–1437 Supplement 16) dated November 2003.

Agencies and Persons Consulted

On December 10, 2003, the staff consulted with the Illinois State official, Frank Niziiolek, of the Illinois Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 21, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 15th day of December 2003.

For the Nuclear Regulation Commission.

Lawrence W. Rossbach,

Project Manager, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31312 Filed 12–18–03; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Leakage from Reactor Pressure Vessel Lower Head Penetrations and Reactor Coolant Pressure Boundary Integrity

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued NRC Bulletin 2003–02 to all holders of operating licenses for pressurized-water nuclear power reactors (PWRs) with penetrations in the lower head of the reactor pressure vessel, (RPV) except those who have permanently ceased operations and have certified that fuel has been permanently removed from the RPV. The NRC issued this bulletin to (1) advise PWR addressees that current methods of inspecting the RPV lower heads may need to be supplemented with additional measures (*e.g.*, bare-metal visual inspections) in order to detect reactor coolant pressure boundary (RCPB) leakage, (2) request PWR addressees to provide the NRC with information related to inspections that have been or will be performed to verify the integrity of the RPV lower head penetrations, and (3) require PWR addressees to provide a written response to the NRC in accordance with the provisions of Section 50.54(f) of Title 10 of the Code of Federal Regulations (10 CFR 50.54(f)).

DATES: The bulletin was issued on August 21, 2003.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Edmund Sullivan at 301–415–2796, e-mail *ejs@nrc.gov* or Stephen Monarque at 415–1544, e-mail: *srm2@nrc.gov*.

SUPPLEMENTARY INFORMATION: NRC Bulletin 2003–02 may be examined and/or copied for a fee at the NRC's Public

Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS Accession No. for the bulletin is ML032320153.

If you do not have access to ADAMS or if there are problems in accessing documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 301–415–4737 or 1–800–397–4209, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 11th day of December 2003.

For the Nuclear Regulatory Commission.

William Beckner,

Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31313 Filed 12–18–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26294; File No. 812–13031]

AEGON/Transamerica Series Fund, Inc., et al.; Notice of Application

December 15, 2003.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order of Exemption under Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') for an exemption from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: AEGON/Transamerica Series Fund, Inc. (''ATSF'') and AEGON/Transamerica Fund Advisers, Inc. (''ATFA'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of ATSF and shares of any other existing or future investment company that is designed to fund insurance products and for which ATFA, or any of its affiliates, may serve as investment manager, investment adviser, subadviser, administrator, manager, principal underwriter or sponsor (ATSF and such other investment companies being hereinafter referred to, collectively, as ''Insurance Investment Companies''), or permit shares of any current or future series of any Insurance Investment Company (''Insurance Fund''), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''); (3) any investment manager to an Insurance Fund and affiliates thereof that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (collectively, the ''Manager''); and (4) any insurance company that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5.

FILING DATE: The Application was filed on October 16, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the Application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on January 9, 2004 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0690. Applicants, c/o John K. Carter, Esq., Senior Vice President and General Counsel, AEGON/Transamerica Fund Advisers, Inc., 570 Carillon Parkway, St. Petersburg, Florida 33716.

FOR FURTHER INFORMATION CONTACT: Curtis A. Young, Senior Counsel or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management at 202–942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (202–942–8090).

Applicants' Representations

1. ATSF is a Maryland corporation organized on August 21, 1985 and is registered as an open-end management investment company under the 1940 Act. ATSF is a series company currently comprising fifty-one (51) series (the ''Insurance Funds''). Additional series of ATSF and classes of the Funds and additional Insurance Funds may be established in the future.

2. ATFA has served as ATSF's investment adviser since 1997. ATFA is directly owned by Western Reserve Life Assurance Co. of Ohio (78 percent) and AUSA Holding Company (22%), both of which are indirect wholly-owned subsidiaries of AEGON N.V., a Netherlands corporation which is a publicly traded international insurance group. Pursuant to investment subadvisory agreements, ATFA retains a subadviser for many Insurance Funds. Each subadviser is registered as an investment adviser with the Commission under the Investment Advisers Act of 1940.

3. ATSF currently offers shares of the Insurance Funds only to separate accounts of affiliated insurance companies in order to fund benefits under flexible premium variable annuity contracts and variable life insurance policies. In the future, the Insurance Investment Companies intend to offer shares of the Insurance Funds (a) separate accounts of affiliated and unaffiliated insurance companies in order to fund variable annuity contracts and variable life insurance contracts (collectively, ''Separate Accounts''); (b) Qualified Plans; (c) any investment manager to an Insurance Fund and affiliates thereof that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (collectively, the ''Manager''); and (d) any insurance company that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (''General Accounts'').

4. Insurance companies whose Separate Account(s) may now or in the future own shares of the Insurance Funds are referred to herein as ''Participating Insurance Companies.'' The Participating Insurance Companies have established or will establish their own separate accounts and design their own variable contracts. Each Participating Insurance Company has or will have the legal obligation to satisfy all applicable requirements under both State and Federal law. Participating Insurance Companies may rely on Rules 6e–2 and 6e–3(T), although some Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well.

5. The Insurance Investment Companies intend to offer shares of the Insurance Funds directly to Qualified Plans outside of the separate account

context. Qualified Plans may choose any of the Insurance Funds that are offered as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. Shares of any of the Insurance Funds sold to such Qualified Plans would be held or deemed to be held by the trustee(s) of said Plans. Certain Qualified Plans, including section 403(b)(7) Plans and section 408(a) Plans, may vest voting rights in Plan participants instead of Plan trustees. Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by the Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

6. Shares of each Insurance Fund also may be offered to the Manager or to General Accounts, in reliance on regulations issued by the Treasury Department (Treas. Reg. 1.817–5) that established diversification requirements for variable annuity and variable life insurance contracts (''Treasury Regulations''). Treasury Regulation 1.817–5(f)(3)(ii) permits such sales as long as the return on shares held by the Manager or General Accounts is computed in the same manner as for shares held by the Separate Accounts, and the Manager or the General Accounts do not intend to sell to the public shares of the Insurance Investment Company that they hold. An additional restriction is imposed by the Treasury Regulations on sales to the Manager, who may hold shares only in connection with the creation or management of the Insurance Investment Company. Applicants anticipate that sales in reliance on these provisions of the Treasury Regulations generally will be made to the Manager for the purpose of providing necessary capital required by section 14(a) of the 1940 Act.

Applicants' Legal Analysis

1. Applicants seek exemptive relief from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Rule 6e–3(T)), to the extent necessary to permit shares of each Insurance Investment Company to be offered and sold to, and held by: (i) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (ii) Qualified Plans outside of the separate account context; (iii) any Manager to an Insurance Fund; and (iv) General Accounts.

2. Section 6(c) authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the 1940 Act and/or of any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust (''Trust Account''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to an insurance company by Rule 6e–2(b)(15) are available only where each registered management investment company underlying the Trust Account (''underlying fund'') offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *.'' (emphasis added). Therefore, the relief granted by rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company. The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' In addition, the relief granted by rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.'' Moreover, because the relief under rule 6e–2(b)(15) is available only where shares are offered *exclusively* to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to General Accounts, Qualified Plans or the Manager.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares. The exemptions granted to a separate account by rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more underlying funds which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis added). Therefore, rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, rule 6e–3(T) does not permit shared funding because the relief granted by rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. The relief provided by rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Investment Companies by Qualified Plans, the Manager or General Accounts. However, because the relief granted by rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to Qualified Plans, the Manager or General Accounts.

5. The relief provided by rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Investment Companies by Qualified Plans, the Manager or General Accounts. However, because the relief granted by rule 6e–3(T)(b)(15) is available only where shares of the

underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to Qualified Plans, the Manager or General Accounts. None of the relief provided for in rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, the Manager or General Accounts, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Investment Companies may themselves be investment companies that rely upon rules 6e–2 and 6e–3(T) and wish to continue to rely upon the relief provided in those Rules, that the Applicants are applying for the requested relief. If and when a material irreconcilable conflict arises in the context of the Application between the Separate Accounts or between Separate Accounts on the one hand and Qualified Plans, the Manager or General Accounts on the other hand, the Participating Insurance Companies, Qualified Plans, the Manager and the General Accounts must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as eligible investment options. Applicants have concluded that investment by the Manager or the inclusion of Qualified Plans and General Accounts as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans, Manager or General Accounts arose, the Qualified Plans, Manager or General Accounts, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants thus argue that allowing the Manager, General Accounts or Qualified Plans to invest directly in the Insurance Investment Companies should not increase the opportunity for conflicts of interest.

6. Applicants assert that the Treasury Regulations made it possible for shares of an investment company to be held by a Qualified Plan, the investment company's investment manager or its affiliates or General Accounts without adversely affecting the ability of shares in the same investment company to also be held by separate accounts of insurance companies in connection with their variable life insurance contracts. Section 817(h) of the Internal Revenue Code of 1986, as amended (''Code''), imposes certain diversification standards on the underlying assets of separate accounts funding variable annuity contracts and variable life contracts. In particular, the Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the separate account investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. The Treasury Regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Treasury Regulations also contain certain exceptions to this requirement, one of which allows shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

7. Applicants also assert that the Treasury Regulations contain another exception that permits the Insurance Funds to sell shares to General Accounts or the Manager subject to certain conditions (Treas. Reg. § 1.817–5(f)(3)(i), (ii)).

8. The promulgation of rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by a Qualified Plan, the investment company's investment manager or its affiliates or General Accounts without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, the sale of shares of the same investment company to separate accounts through which variable life insurance contracts are issued, to Qualified Plans, to the investment company's investment manager and its affiliates or General Accounts (collectively, ''eligible shareholders'') could not have been envisioned at the time of the adoption of rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

9. Paragraph (3) of section 9(a) provides, among other things, that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (a)(2). rule 6e–2(b)(15)(i) and (ii) and rule 6e–3(T)(b)(15)(i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying management investment company. The relief provided by rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment manager or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) are participating in the management or administration of the fund. The partial relief granted in rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply section 9(a) of the 1940 Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Funds as the funding medium for variable contracts. There is no regulatory purpose in extending the monitoring requirements to embrace a full application of section

9(a)'s eligibility restrictions because of mixed funding or shared funding and sales to Qualified Plans, the Manager or General Accounts. Those Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Funds. Those individuals who participate in the management or administration of the Insurance Funds will remain the same regardless of which separate accounts, insurance companies, Qualified Plans or General Accounts use the Insurance Funds. Therefore, applying the monitoring requirements of section 9(a) because of investment by separate accounts of other Participating Insurance Companies would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. Moreover, the relief requested should not be affected by the sale of shares of the Insurance Investment Companies to Qualified Plans, the Manager or General Accounts. The insulation of the Insurance Investment Companies from those individuals who are disqualified under the 1940 Act remains in place. Because Qualified Plans, the Manager and General Accounts are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

10. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to underlying fund shares held by a separate account. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide partial exemptions from those sections to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(1) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such underlying funds to make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of such underlying funds or to approve or disapprove any contract between an underlying fund and its investment manager, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such underlying fund's investment policies, principal underwriter, or any investment manager (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of rules 6e–2 and 6e–3(T)).

11. Rule 6e–2 recognizes that a variable life insurance contract is an insurance contract; it has important elements unique to insurance contracts; and it is subject to extensive state regulation of insurance. In adopting rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, rule 6e–3(T)'s corresponding provisions presumably were adopted in recognition of the same factors. State insurance regulators have much the same authority with respect to variable annuity separate accounts as they have with respect to variable life insurance separate accounts. Insurers generally assume both mortality and expense risks under variable annuity contracts. Therefore, variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. The Commission staff has not addressed the general issue of state insurance regulators' authority in the context of variable annuity contracts, and has not developed a single comprehensive exemptive rule for variable annuity contracts.

12. The Insurance Investment Companies' sale of shares to Qualified Plans, the Manager or General Accounts will not have any impact on the relief requested herein in this regard. Shares of the Insurance Funds sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Similarly, the Manager and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, the Manager or General Accounts.

13. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different Participating Insurance Companies may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants further assert that shared funding by unaffiliated Participating Insurance Companies is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated Participating Insurance Companies, which rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated Participating Insurance Companies may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

15. Applicants assert that the right under rules 6e–2(b)(15) and 6e–3(T)(b)(15) of an insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the

authority of State insurance administrators over separate accounts. Under rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, a particular Participating Insurance Company's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at an Insurance Investment Company's election, to withdraw its separate account's investment in that Insurance Investment Company, and no charge or penalty would be imposed as a result of such withdrawal.

16. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans, the Manager or General Accounts. The transfer agent(s) for the Insurance Investment Companies will inform each shareholder, including each separate account, each Qualified Plan, the Manager and each General Account, of its share ownership, in an Insurance Investment Company. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement. Investment by Qualified Plans or General Accounts in any Insurance Investment Company will similarly present no conflict. The likelihood that voting instructions of insurance company contract owners will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Qualified Plan or General Account choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans or General Accounts arises, the Qualified Plans or General Accounts may simply redeem their shares and make alternative investments. Votes cast by the Qualified Plans or General Accounts, of course, cannot be disregarded but must be counted and given effect.

17. Applicants assert that there is no reason why the investment policies of an Insurance Fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans and General Accounts (*i.e.*, long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts. Each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the growth of the Insurance Investment Company. In addition, permitting mixed and shared funding will facilitate the establishment of additional series serving diverse goals. The broader base of contract owners and shareholders can also be expected to provide economic justification for the creation of additional series of each Insurance Investment Company with a greater variety of investment objectives and policies.

19. Applicants note that section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5, which established diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, ''qualified pension or retirement plans,'' ''the general account of a life insurance company,'' ''the manager * * * of an investment company'' and separate accounts to share the same underlying management investment company. Therefore, neither the Code nor the Treasury Regulations nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts, the Manager and General Accounts all invest in the same underlying fund.

20. Applicants assert that the ability of the Insurance Investment Companies to sell their respective shares directly to Qualified Plans, the Manager or General Accounts does not create a ''senior security,'' as such term is defined under section 18(g) of the 1940 Act, with respect to any variable contract, Qualified Plan, Manager or General Accounts. As noted above, regardless of the rights and benefits of contract owners or Plan participants, the Separate Accounts, Qualified Plans, the Manager and the General Accounts have rights only with respect to their respective shares of the Insurance Investment Companies. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Investment Companies has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Applicants assert that permitting an Insurance Investment Company to sell its shares to the Manager in compliance with Treas. Reg. 1.817–5 will enhance Insurance Investment Company management without raising significant concerns regarding material irreconcilable conflicts. Applicants assert that the Insurance Investment Companies may be deemed to lack an insurance company ''promoter'' for purposes of rule 14a–2 under the Act. Accordingly, Applicants assert that such Insurance Investment Companies will be subject to the requirements of section 14(a) of the 1940 Act, which generally requires that an investment company

have a net worth of $100,000 upon making a public offering of its shares.

22. Applicants assert that given the conditions of Treas. Reg. 1.817–5(i)(3) and the harmony of interest between an Insurance Investment Company, on the one hand, and its Manager or a Participating Insurance Company, on the other, little incentive for overreaching exists. Applicants assert that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants assert that permitting investment by the Manager will permit the orderly and efficient creation and operation of Insurance Investment Companies, and reduce the expense and uncertainty of using outside parties at the early stages of Insurance Investment Company operations.

23. Applicants assert that various factors have limited the number of insurance companies that offer variable contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain Participating Insurance Companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Investment Companies as a common investment medium for variable contracts, Qualified Plans and General Accounts would help alleviate these concerns, because Participating Insurance Companies, Qualified Plans and General Accounts will benefit not only from the investment and administrative expertise of ATFA, or any other investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Investment Companies available for mixed and shared funding and permitting the purchase of Insurance Investment Company shares by Qualified Plans and General Accounts may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation. Mixed and shared funding also may benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Insurance Investment Companies. This may benefit variable contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Insurance Investment Companies, or by making the addition of new Insurance Funds more feasible.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. A majority of the Board of Trustees or Board of Directors (''Board'') of each Insurance Investment Company shall consist of persons who are not ''interested persons'' of the Insurance Investment Company, as defined by section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission (''Independent Board Members''), except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (i) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. Each Board will monitor the respective Insurance Investment Company for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, participants of Qualified Plans, the Manager or General Accounts investing in that Insurance Investment Company, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable Federal or State insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any Insurance Fund are being managed; (v) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, Plan trustees, or Plan participants; (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of an Insurance Investment Company (''Participating Qualified Plan''), any Participating Insurance Company (on their own behalf, as well as by virtue of any investment of general account assets in all Insurance Investment Companies), and the Manager (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Each of the Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in an Insurance Investment Company under their agreements governing participation in the Insurance Investment Company, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, if applicable, Plan participants.

4. If it is determined by a majority of the Board of an Insurance Investment Company, or a majority of its Independent Board Members, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Participating Qualified Plans shall, at their expense or, at the discretion of a Manager to an Insurance Investment Company, at that Manager's expense, and to the extent reasonably practicable (as determined by a majority of the Independent Board Members), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the Separate

Accounts from the relevant Insurance Investment Company or any series therein and reinvesting such assets in a different investment medium (including another Insurance Fund, if any); (ii) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (iii) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Insurance Investment Company or any Insurance Fund and reinvesting those assets in a different investment medium; and (iv) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Insurance Investment Company's election, to withdraw its Separate Account's investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Investment Company, to withdraw its investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Investment Company, and these responsibilities will be carried out with a view only to the interests of the contract owners or, as applicable, Plan participants.

For the purposes of this Condition (4), a majority of the Independent Board Members shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Investment Company or its Manager be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (i) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (ii) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered Separate Account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such Participating Insurance Companies will vote shares of each Insurance Fund held in their registered Separate Accounts in a manner consistent with voting instructions timely received from such contract owners. Each Participating Insurance Company will vote shares of each Insurance Fund held in its registered Separate Accounts for which no timely voting instructions are received, as well as shares held by its General Accounts, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their registered Separate Accounts investing in an Insurance Investment Company calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Investment Company's shares and to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in an Insurance Investment Company shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Investment Company. Each Plan will vote as required by applicable law and governing Plan documents.

7. An Insurance Investment Company will notify all Participating Insurance Companies and Qualified Plans that disclosure regarding potential risks of mixed and shared funding may be appropriate in prospectuses for any of the Separate Accounts and in Plan documents. Each Insurance Investment Company will disclose in its prospectus that: (i) Shares of the Insurance Investment Company are offered to insurance company Separate Accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans and General Accounts; (ii) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Insurance Investment Company and the interests of Qualified Plans or General Accounts investing in the Insurance Investment Company might at some time be in conflict; and (iii) the Board will monitor the Insurance Investment Company for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent rule 6e–2 and rule 6e–3(T) under the 1940 Act are amended, or proposed rule 6e–3 is adopted under the 1940 Act, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then each Insurance Investment Company and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with rule 6e–2 and rule 6e–3(T), as amended, and rule 6e–3, as adopted, to the extent such rules are applicable.

10. Each Insurance Investment Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Insurance Investment Company), and in particular each Insurance Investment Company will either provide for annual

meetings (except insofar as the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although ATSF is not one of the trusts described in section 16(c) of the 1940 Act) as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, each Insurance Investment Company will act in accordance with the Commission's interpretation of the requirements of section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Managers will vote their shares in the same proportion as all contract owners having voting rights with respect to the relevant Insurance Investment Company; provided, however, that the Manager or any General Account shall vote their shares in such other manner as may be required by the Commission or its staff.

12. The Participants shall at least annually submit to the Board of an Insurance Investment Company such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in this Application and said reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of Participating Insurance Companies and Participating Qualified Plans to provide these reports, materials and data to the Board of the Insurance Investment Company when it so reasonably requests, shall be a contractual obligation of the Participating Insurance Companies and Participating Qualified Plans under their agreements governing participation in each Insurance Investment Company.

13. If a Qualified Plan should become an owner of 10 percent or more of the assets of an Insurance Investment Company, the Insurance Investment Company shall require such Plan to execute a participation agreement with such Insurance Investment Company which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Investment Company.

Conclusion

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31309 Filed 12–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48918; File No. SR–NYSE–2003–40]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing of Certain 7¾% PEPS[SM] Units Under Section 703.19

December 12, 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 November 26, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE.

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 the Substance of the Proposed Rule Change

The NYSE proposes to list and trade 7¾% Premium Equity Participating Security Units (PEPS[SM] Units), Series B (''Units''), each of which consists of a purchase contract issued by PPL Corporation (''PPL''), and a 2.5% undivided beneficial ownership interest in a $1,000 principal amount note due 2006 issued by PPL Capital Funding, Inc. (''PPL Capital'') and guaranteed by PPL.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE 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. NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 703.19 of the Listed Company Manual (''Manual''), the Exchange may approve for listing and trading securities not otherwise covered by the criteria of Sections 1 and 7 of the Manual, provided the issue is suited for auction market trading.[3] The Exchange proposes to list and trade, under Section 703.19 of the Manual, the Units, each of which consists of (1) a purchase contract (''Purchase Contract'') issued by PPL and (2) a 2.5% undivided beneficial ownership interest in a $1,000 principal amount note (''Note'') due May 2006 issued by PPL Capital and guaranteed by PPL.[4]

The Units are being offered pursuant to an exchange offer, the full terms of which are set out in the Registration Statement.[5] Specifically, PPL offers to exchange the Units and a cash payment of $0.375 for each validly tendered and accepted 7 ¾% Premium Equity Participating Security Unit (collectively referred to as the ''Old Units''), subject to, among other things, the minimum condition that there are validly tendered at the expiration of the exchange offer at least 35% of the Old Units, and the condition that the Old Units remain listed on the Exchange.

Each Purchase Contract obligates the holder of a Unit to purchase from PPL, no later than May 18, 2004 (the

[3] *See* Securities Exchange Release No. 28217 (July 18, 1990), 55 FR 30056–01 (July 24, 1990).

[4] PPL and PPL Capital filed Amendment No. 1 to Form S–4 relating to the Units (the ''Registration Statement'') on October 20, 2003. *See* Registration No. 333–108450. The information provided in this Rule 19b–4 filing relating to the Units is based entirely on information included in the Registration Statement.

[5] In particular, the Registration Statement provides a detailed discussion and comparison of the Old Units and the Units so that holders can evaluate whether it is in their best interests to participate in the exchange offer.

''Contract Settlement Date''), for a price of $25, the following number of shares of PPL common stock, $0.01 par value: (a) If the average of the closing prices of PPL's common stock over the 20-trading day period ending on the third trading day prior to the Contract Settlement Date multiplied by 1.017 is equal to or greater than $65.03, 0.3910 shares; (b) if the average of the closing prices of PPL's common stock over the same period multiplied by 1.017 is less than $65.03 but greater than $53.30, a number of shares, between 0.3910 and 0.4770 shares, having a value, based on the 20-trading day average of the closing prices, equal to $25; and (c) if the average of the closing prices of PPL's common stock over the same period multiplied by 1.017 is less than or equal to $53.30, 0.4770 shares. PPL will also pay Unit holders a quarterly fixed amount in cash, called a contract adjustment payment, at a rate of 0.46% per year of the stated amount of $25 per Unit, or $0.1150 per year.

From the date of issuance until the Contract Settlement Date, the Notes will constitute subordinated obligations of PPL Capital and will be guaranteed on a subordinated basis by PPL. On or after Contract Settlement Date, the Notes will constitute senior obligations of PPL Capital and will be guaranteed on a senior basis by PPL. Prior to the Contract Settlement Date, the ownership interest in the Notes will be pledged to secure the Unit holders' obligation to purchase PPL's common stock under the purchase contract. PPL has appointed a remarketing agent to remarket, or sell on behalf of Unit holders, the Notes to third party investors on a date (the ''Remarketing Date'') just prior to the Contract Settlement Date. Unit holders may choose to opt out of the remarketing of the Notes to third party investors to satisfy their payment obligations on the Contract Settlement Date. A Unit holder who opts out of the remarketing of the Notes would be required to settle each Purchase Contract for $25.00 in cash.

PPL Capital will also pay Unit holders interest at a rate of 7.29% per year on the principal amount of the Note. If there is a successful remarketing of the Notes, the interest rate will be reset and may be greater or less than 7.29% per year. PPL unconditionally guarantees the payment of principal and interest on the Notes of PPL Capital.

The Units represent both an equity and fixed income investment in PPL. The equity investment is in the form of the Purchase Contract, which, unless earlier terminated, requires a Unit holder to purchase a variable number of shares of PPL common stock. The fixed income investment is in the form of a trust preferred security that represents an undivided beneficial interest in the subordinated Notes of PPL Capital which are guaranteed on a subordinated basis by PPL.

The Units will conform to the issuer listing criteria under Section 703.19 of the Manual and be subject to the relevant continuing listing criteria under Section 801 and 802 of the Manual.[6] The Exchange will impose the issuer listing requirements of Section 703.19 of the Manual on PPL. Under Section 703.19(1) of the Manual, among other things, if the issuer is an affiliate of an NYSE-listed company, the NYSE-listed company must be a company in good standing.[7] The Exchange represents that PPL is an NYSE-listed company in good standing. The Units will also meet the listing standards found in Section 703.19(2) of the Manual, except that the Units will not have the minimum life of one year required for listings.[8] However, the Exchange does not believe that the Units will raise any significant new regulatory issues. Because the Units will meet or exceed the other requirements under Section 703.19 of the Manual, the Exchange believes that the Units will have sufficient liquidity and depth of market, even if listed for a period shorter than one year. The Exchange also notes that the underlying PPL common stock from which the value of the Unit is in part derived will remain outstanding and listed on the Exchange following maturity of the Units.

The Exchange's existing equity trading rules apply to trading of the Units. The Exchange will also have in place certain other requirements to provide additional investor protection. First, pursuant to Exchange Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Units.[9] Second, the Units will be subject to the equity margin rules of the Exchange.[10] Third, the Exchange will, prior to trading the Units, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Units and highlighting the special risks and characteristics of the Units. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Units: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units. Specifically, the Exchange will rely on its existing surveillance procedures governing equity, which have been deemed adequate under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[11] in general, and furthers the objectives of section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[6] Section 801.00 of the Manual provides, in relevant part, that when an issuer that has fallen below any of the continued listing criteria has more than one class of securities listed, the Exchange will give consideration to delisting all such classes. Section 802.01D of the Manual states, in relevant part, that delisting of specialized securities will be considered when the number of publicly-held shares is less than 100,000; the number of holders is less than 100; and aggregate market value of shares outstanding is less than $1 million. The Exchange also notes that it may, at any time, suspend a security if it believes that continued dealings in the security on the Exchange are not advisable.

[7] The issuer listing standards require: (1) If the issuer is a NYSE-listed company, the issuer must be a company in good standing; (2) if the issuer is an affiliate of an NYSE-listed company, the NYSE-listed company must be a company in good standing; and (3) if not listed, the issuer must meet NYSE original listing standards as set forth in Sections 102.01–102.03 and 103.01–05 of the Manual.

[8] The equity listing standards require: (1) At least 1 million securities outstanding; (2) at least 400 holders; (3) minimum life of one year; and (4) at least $4 million market value. The Units will not have a minimum life of one year because the Contract Settlement Date is May 18, 2004.

[9] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[10] *See* NYSE Rule 431.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NYSE requested that the Commission find good cause for approving the proposal to accommodate the listing of the Units by December 18, 2003, the expiration date of the exchange offer pursuant to which the Units are being offered. The Commission, however, does not find good cause to accelerate approval of this proposal.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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 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–NYSE–2003–40. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 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 Exchange. All submissions should refer to the File No. SR–NYSE–2003–40 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31262 Filed 12–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48919; File No. SR–NYSE–2003–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend for an Additional Six Months Its Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Provided Portable Telephone on the Exchange Floor

December 12, 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 November 24, 2003, the New York Stock Exchange, Inc. (''NYSE'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its pilot program that amends NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the Exchange (''Pilot'') for an additional six months to expire on June 16, 2004. The Pilot is currently in effect on a six-month pilot basis and set to expire on December 16, 2003.[3] The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of 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

In the Original Order,[4] the Commission approved the Pilot to be implemented as a six-month pilot beginning on or about May 1, 2003. On June 5, 2003, the Exchange extended the implementation date for the Pilot to begin no later than June 23, 2003, instead of on or about May 1, 2003, as originally adopted in the Original Order.[5] In a memorandum to all non-specialist members and member organizations, the Exchange stated that the Pilot was implemented on June 16, 2003, and thus would expire on December 16, 2003. The Exchange represents that no regulatory actions, or administrative or technical problems, other than routine telephone maintenance issues, have resulted from the Pilot over the past few months. Therefore, the Exchange seeks to extend the Pilot for an additional six months.

NYSE Rule 36 (Communications Between Exchange and Members' Offices) governs the establishment of telephone or electronic communications between the Exchange's Trading Floor and any other location. Prior to the Pilot, NYSE Rule 36.20 prohibited the use of portable telephone communications between the Trading Floor and any off-Floor location, and the only way that voice communication could be conducted by Floor brokers

[13] 17 CFR.200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) (SR–NYSE–2002–11) (''Original Order'').

[4] See Original Order, *supra* note 3.

[5] *See* Securities Exchange Act Release No. 47992 (June 5, 2003), 68 FR 35047 (June 11, 2003) (SR–NYSE–2003–19).

between the Trading Floor and an off-Floor location was by means of a telephone located at a broker's booth. These communications often involved a customer calling a broker at the booth for ''market look'' information. Prior to the Pilot, a broker could not use a portable phone in a trading crowd at the point of sale to speak with a person located off the Floor.

The Exchange is proposing to extend the Pilot for an additional six months, expiring on June 16, 2004. The Pilot would amend NYSE Rule 36 to permit a Floor broker to use an Exchange authorized and issued portable telephone on the Floor. Thus, with the approval of the Exchange, a Floor broker would be permitted to engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. Such communications would permit the broker to accept orders consistent with Exchange rules, provide status and oral execution reports as to orders previously received, as well as ''market look'' observations as have historically been routinely transmitted from a broker's booth location. Use of a portable telephone on the Exchange Floor other than one authorized and issued by the Exchange would continue to be prohibited.

Furthermore, both incoming and outgoing calls would continue to be allowed, provided the requirements of all other Exchange rules have been met. A broker would not be permitted to represent and execute any order received as a result of such voice communication unless the order was first properly recorded by the member and entered into the Exchange's Front End Systemic Capture (''FESC'') electronic database.[6] In addition, Exchange rules require that any Floor broker receiving orders from the public over portable phones must be properly qualified to do direct access business under Exchange Rules 342 and 345, among others.[7] Furthermore, since the Exchange currently permits portable communications at the point of sale for orders in Investment Company Units (as defined in Section 703.16 of the Listed Company Manual), also known as Exchange-Traded Funds (''ETFs''),[8] and the Pilot would allow for the use of portable phones for orders in ETFs, orders in ETFs would also be subject to the same FESC requirements as orders in any other security listed on the Exchange.

As noted above, under the policy prior to the Pilot, an off-Floor customer could communicate with a broker in a trading crowd only in an indirect way by calling a broker's booth and using the booth clerk as an intermediary. The Exchange believes that the extension of the Pilot would enable the Exchange to provide more direct, efficient access to its trading crowds and customers, increase the speed of transmittal of orders and the execution of trades, and provide an enhanced level of service to customers in an increasingly competitive environment.[9] By enabling customers to speak directly to a Floor broker in a trading crowd on an Exchange authorized and issued portable telephone, the Exchange believes that the proposed rule change would expedite and make more direct the free flow of information, which, prior to the Pilot, had to be transmitted somewhat more circuitously via the broker's booth.

The Exchange also notes that specialists are subject to separate restrictions in NYSE Rule 36 on their ability to engage in voice communications from the specialist post to an off-Floor location.[10] The amendment to NYSE Rule 36 would not apply to specialists, who would continue to be prohibited from speaking from the post to upstairs trading desks or customers.

Pilot Program Results

Since the Pilot's inception, the Exchange represents that there have been approximately 800 portable phone subscribers. In addition, with regard to portable phone usage, for a sample week of July 28, 2003 through August 1, 2003, an average of 19,611 calls per day were originated from portable phones, and an average of 3218 calls per day were received on portable phones. Of the calls originated from portable phones, an average of 18,116 calls per day were internal calls to the booth, and 1495 calls per day were external calls. Thus, over 90% of the calls that originated from portable phones were internal calls to the booth. With regard to received calls, of the 3218 average calls per day received, an average of 1351 calls per day were external calls, and an average of 1867 calls per day were internal calls received from the booth. Thus, approximately 58% of all received calls were internally generated, and 42% were calls from the outside.

Therefore, the Exchange believes that the Pilot appears to be successful in that there is a reasonable degree of usage of portable phones, but as noted above, there have been no regulatory, administrative, or other technical problems associated with their usage. The Exchange believes that the Pilot appears to facilitate communication on the Floor without any corresponding drawbacks. Accordingly, the Exchange believes it is appropriate to extend the Pilot for an additional six months, expiring on June 16, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[11] in general, and furthers the objectives of section 6(b)(5) of the Act[12] 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. The Exchange believes that the amendment to NYSE Rule 36 would support the mechanism of free and open markets by providing for increased means by which communications to and from the Floor of the Exchange may take place.

[6] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR–NYSE–98–25). *See also* Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR–NYSE–2001–39) (discussing certain exceptions to FESC, such as orders to offset an error, or a bona fide arbitrage, which may be entered within 60 seconds after a trade is executed).

[7] For more information regarding Exchange requirements for conducting a public business on the Exchange Floor, *see* Information Memos 01–41 (November 21, 2001), 01–18 (July 11, 2001) (available on *www.nyse.com/regulation/regulation.html*) and 91–25 (July 8, 1991).

[8] Previously, under an exception to NYSE Rule 123(e), orders in ETFs could first be executed and then entered into FESC. However, in SR–NYSE–2003–09, the Exchange eliminated the exception to NYSE Rule 123(e) for ETFs, and, as part of its proposal in SR–NYSE–2002–11, allowed the use of portable phones for orders in ETFs. *See* Securities Exchange Act Release No. 47667 (April 11, 2003), 68 FR 19063 (April 17, 2003). NYSE Rule 123(e) provides that all orders in any security traded on the Exchange be entered into FESC before they can be represented in the Exchange's auction market.

[9] *See, e.g.*, Securities Exchange Act Release No. 43493 (October 30, 2000), 65 FR 67022 (November 8, 2000) (SR–CBOE–00–04) (expanding the Chicago Board Options Exchange, Inc.'s existing policy and rules governing the use of telephones at equity option trading posts by allowing for the receipt of orders over outside telephone lines, from any source, directly at equity trading posts), and Securities Exchange Act Release No. 43836 (January 11, 2001), 66 FR 6727 (January 22, 2001) (SR–PCX–00–33) (discussing and approving the Pacific Exchange, Inc.'s proposal to remove current prohibitions against Floor Brokers' use of cellular or cordless phones to make calls to persons located off the trading floor).

[10] *See* Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR–NYSE–00–31) (discussing restrictions on specialists' communications from the post).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange requests that the Commission waive the 30-day delayed operative date of Rule 19b–4(f)(6)(iii).[15] The Exchange believes that waiver of this period will allow the current Pilot to operate for an additional six months and avoid inconvenience and interruption to the public. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective.[16] The Commission believes that the waiver of the 30-day operative delay will allow the Exchange to continue, without interruption, the existing operation of its Pilot for an additional six months, expiring on June 16, 2004.

The Commission believes that the use of Exchange authorized and issued portable telephones would allow the Exchange to have access to all phone records. This ability to track phone calls, along with the data captured in FESC, should aid the Exchange in surveilling for compliance with Exchange rules. In this regard, the Commission notes that proper surveillance is an essential component of any telephone access policy to an Exchange Trading Floor. Surveillance procedures should help to ensure that Floor brokers who are interacting with the public on portable phones are authorized to do so, as NYSE Rule 36 will require,[17] and that orders are being handled in compliance with NYSE rules. The Commission expects that the Exchange actively review these procedures and address any potential concerns that have arisen during the extension of the Pilot. The Commission also requests that the Exchange report any problems, surveillance or enforcement matters associated with the Floor brokers' use of an Exchange authorized and provided portable telephone on the Floor. As stated in the Original Order, the NYSE should also address whether additional surveillance would be needed because of the derivative nature of the ETFs. Furthermore, if the NYSE decides to request permanent approval or another extension of the Pilot, we would expect that the NYSE submit information documenting the usage of the phones, any problems that have occurred, including, among other things, any regulatory actions or concerns, and any advantages or disadvantages that have resulted.[18]

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–NYSE–2003–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 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 NYSE. All submissions should refer to File No. SR–NYSE–2003–38 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31263 Filed 12–18–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[17] *See* note 7 and accompanying text for other NYSE requirement that Floor brokers be properly qualified before doing a public customer business.

[18] This information along with any proposal to extend, or permanently approve, the pilot should be submitted at least two to three months prior to the expiration of the six-month pilot.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48925; File No. SR–Phlx–2003–78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Fees for Remote Specialists

December 15, 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 November 21, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Phlx proposes to amend its schedule of dues, fees and charges to provide that fees, dues, discounts, credits and charges that apply to Phlx remote competing specialists will also be applicable to Phlx remote primary specialists.[3] The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 6, 2002, in connection with the planned commencement of the Exchange's remote competing specialist program, the Exchange amended its fee schedule to specify fees, dues, discounts, credits and charges applicable to Phlx remote competing specialists.[4] Because at that time the Exchange's remote specialist program was to be limited to remote competing (as opposed to primary) specialists, that proposed rule change applied only to remote competing specialists.[5]

The Commission recently approved a proposed rule change to expand Phlx's remote specialist program to include remote primary specialists in addition to remote competing specialists.[6] The purpose of this proposed rule change is to extend the same fees, dues, discounts, credits and charges applicable to remote competing specialists to remote primary specialists.[7] According to the Exchange, the revenue generated by these fees will enhance the Exchange's ability to provide a marketplace for its remote primary and competing specialists and other members. Accordingly, the text of Appendix A of the Exchange's fee schedule is amended by the deletion of the word ''competing'' in footnote 22. Also, the term ''RS'' (for ''Remote Specialist'') is substituted for the term ''RCS'' (for ''Remote Competing Specialist'') in the reference to the ''Regular ETP RCS Fee.''[8] All existing references to ''Remote Specialists'' on Appendix A will now be construed to include both remote primary specialists and remote competing specialists.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act[9] in general, and furthers the objectives of section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange represents that the proposal is designed to enable it to provide a competitive marketplace for its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, 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.

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[3] Subsection (b)(5) of Phlx Rule 229A, Operation of PACE System when Competing Specialists are Trading, provides in part that ''Primary Specialist'' shall mean the primary specialist identified as such by the Equity Allocation, Evaluation and Securities Committee. Subsection (b)(6) of Phlx Rule 229A provides in part that ''Competing Specialist'' shall mean any competing specialist identified as such by the Equity Allocation, Evaluation and Securities Committee pursuant to Phlx Rule 460. Phlx Rule 460, Procedures for Competing Specialists, sets forth procedures for applying to become a competing specialist as well as competing specialists' obligations.

[4] *See* Securities Exchange Act Release No. 46392 (August 21, 2002), 67 FR 55294 (August 28, 2002) (File No. SR–Phlx–2002–45) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Fees for Remote Competing Specialists). In that filing, the Exchange adopted a number of new fees applicable to members and member organizations in connection with their remote competing specialist operations, and amended the existing exemption of certain member organizations operating on the Exchange's trading floor from the Exchange's Examinations Fee in light of the commencement of the remote competing specialist program. The Exchange noted in that filing that certain of its current dues, fees and charges are assessed for privileges the Exchange extends with respect to, and services it provides on, the physical equity trading floor. These fees include the Trading Post/Booth Fee; Trading Post with Kiosk Fee; the Kiosk Construction Fee; the Controller Space Fee; the Floor Facility Fees; the Direct Wire to the Floor Fee; the Telephone System Line Extensions Fee; the Quotron Equipment Fee; the Instinet, Reuters Equipment Fee; the Trading Floor Personnel Registration Fee; the Computer Equipment Services, Repairs or Replacements Fee and the Computer Relocation Requests Fee. The Exchange represents that it does not charge these fees to remote specialists.

[5] *See* Phlx Rule 461, PACE Remote Specialist, and Securities Exchange Act Release No. 45184 (December 21, 2001), 67 FR 622 (January 4, 2002) (order approving File No. SR–Phlx–2001–98).

[6] *See* Securities Exchange Act Release No. 48816 (November 20, 2003), 68 FR 66912 (November 28, 2003) (order approving File No. SR–Phlx–2003–10). In SR–Phlx–2003–10, the Exchange proposed to amend its rules to permit ''primary specialists'' to trade away from the Phlx floor, on a remote basis, in limited circumstances. That filing was approved by the Commission on November 20, 2003.

[7] A related proposed rule change has been filed by Stock Clearing Corporation of Philadelphia with the Commission to amend its schedule of dues, fees and charges as it relates to remote specialists. *See* File No. SR–SCCP–2003–06.

[8] Currently, the Regular ETP RCS Fee of $1,000.00 per month is charged in lieu of the Regular ETP Fee for equity trading permit holders whose Exchange business is limited to operating as a remote competing specialist. The Exchange now proposes to charge that fee in lieu of the Regular ETP Fee for equity trading permit holders whose Exchange business is limited to operating as a remote competing or remote primary specialist or both, and to change the name of the fee accordingly to the ''Regular ETP RS Fee.''

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

SR–Phlx–2003–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 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 Phlx. All submissions should refer to File No. SR–Phlx–2003–78 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31310 Filed 12–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48923; File No. SR–OC–2003–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC To Adopt OneChicago Rule 616 Relating to ''Chinese Walls''

December 12, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on December 8, 2003, OneChicago, LLC (''OneChicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared by OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''). OneChicago filed a written certification with the CFTC under section 5c(c) of the Commodity Exchange Act[3] on December 5, 2003, which stated that the effective date of the proposed rule change is December 8, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago proposes to add new OneChicago Rule 616, attached hereto as Exhibit 4, to create a safe harbor for OneChicago market makers so that they may engage in Other Business Activities described below which may result in inadvertent cross trades without violating OneChicago Rule 604, provided that OneChicago confirms that each such market maker has implemented and maintains ''Chinese Wall'' procedures in conformance with the Rule. The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in [brackets].

* * * * *

Rule 616. Safe Harbor for Inadvertent Cross Trades

(a) An Entity acting as a market maker for any Exchange product (an ''Exchange Market Maker'') may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, and shall not be in violation of Exchange Rule 604 due to inadvertent cross trades with respect to any trades that are matched by the OneChicago System against trades entered for or on behalf of the Other Business Activities, provided that the Exchange Market Maker implements and maintains a Chinese Wall between its market-making operations and such Other Business Activities that meets the requirements below.

(b) Definitions: For purposes of this rule, (1) ''Other Business Activities'' means:

(A) conducting an investment or banking or public securities business;

(B) making markets in the securities underlying the security futures or options on the securities or indexes underlying the security futures in which it makes markets; or

(C) entering agency orders or proprietary orders (other than market making transactions for Exchange products) into the OneChicago System.

(2)''Chinese Wall'' means an organizational structure that satisfies each of the following conditions:

(A) The market-making activities are conducted in a location physically separated from the locations in which the Other Business Activities are conducted in a manner that effectively impedes communications between persons conducting the market-making function and persons conducting the Other Business Activities.

(B) Procedures are implemented and maintained to prevent persons in possession of material, non-public corporate or market information on one side of the Chinese Wall from divulging such information to persons on the other side of the Chinese Wall.

(C) Persons on one side of the Chinese Wall may not exercise influence or control over persons on the other side of the Chinese Wall, except that:

(i) the market-making operations and the Other Business Activities may be under common management provided such managerial oversight (a) does not conflict with or compromise the Entity's responsibilities under the Rules of the Exchange and (b) persons occupying managerial positions do not divulge information or allow information to be divulged pertaining to market maker positions and trading activities to any other person so that any person on one side of the Chinese Wall becomes aware of pending or anticipated quotes or unfilled orders on the other side of the Chinese Wall; and

(ii) the common supervisor or any individual responsible for monitoring the overall risk exposure of the Entity (the ''Risk Exposure Supervisor'') may establish general trading parameters with respect to both market-making and other proprietary trading other than on an order specific basis, provided that the Risk Exposure Supervisor does not:

(a) enter orders into the OneChicago System or make trading decisions for either the Entity's market-making account or proprietary account;

(b) provide to any person performing the Other Business Activities described in paragraph (b)(1)(c) of this Rule any information relating to market-making activity; nor

(c) provide a person performing the market-making function with information regarding the firm's pending transactions or order flow arising out of its activities described in paragraph (b)(1)(c) of this Rule.

(3) An ''Entity'' means an inanimate business organization, including a corporation, a partnership or other legal business organization. It does not include animate beings.

(c) An Entity implementing a Chinese Wall pursuant to this Rule shall submit to the Exchange a written statement setting forth:

(1) The manner in which it intends to satisfy the conditions in paragraph (b)

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

of this Rule and the compliance and audit procedures it proposes to implement to ensure that the Chinese Wall is maintained;

(2) The names and titles of the person or persons responsible for maintenance and surveillance of the procedures;

(3) A commitment to provide the Exchange with such information and reports as the Exchange may request relating to the transactions of the Entity and its affiliates;

(4) A commitment to take appropriate disciplinary action against any person violating this Rule or the Entity's internal compliance and audit procedures adopted pursuant to subparagraph (c)(1) of this Rule, and an acknowledgement that the Exchange may take appropriate disciplinary action, including (without limitation) reallocation of any or all Contracts in which it serves as a market maker, in the event of such a violation;

(5) Whether the Entity or an affiliate of the Entity intends to clear the Entity's proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used in a way that would compromise the Entity's Chinese Wall, which procedures, at a minimum, must be the same as those used by the Entity or the affiliate to clear for unaffiliated third parties; and

(6) An acknowledgement that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Rule may be a violation of the CEA, the Commission's Regulations, the Exchange Act, the rules thereunder or the Rules of the Exchange.

(d) An Exchange Market Maker cannot avail itself of this Rule until it has received written confirmation from the Exchange that the organizational structure and the compliance and audit procedures described in the statement submitted by such Exchange Market Maker in accordance with paragraph (c) above comply with this Rule.

(e) Subparagraph (c)(5) permits an Entity or an affiliate of the Entity to clear the Entity's market maker transactions if it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Chinese Wall. Such procedures must provide that any information pertaining to market maker positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under this Rule to have access to such information or to other employees in senior management positions, including common management as described in clause (b)(2)(C)(i) of this Rule, who are involved in exercising managerial oversight with respect to the market making activity.

(f) Notwithstanding paragraph (a) of this Rule, an Entity shall not be required to maintain a Chinese Wall to obtain safe harbor from violating Rule 604 due to inadvertent cross trades under the following conditions:

(1) the Entity functions as a non-market market Exchange Member in the OneChicago System solely in Contracts in which the Entity is not appointed as a market market pursuant to Rule 515(n); and

(2) the Entity enters orders into the OneChicago System as a non-market marker Exchange Member only for (i) the proprietary account of such Entity or (ii) the account of entities that are affiliated with such Entity.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago proposes to add new OneChicago Rule 616 to provide a safe harbor to market makers for inadvertent cross trades that may occur between their market-making operations in OneChicago's products and their ''Other Business Activities'' (as defined below) on the condition that OneChicago confirms that each such market maker has implemented and maintains ''Chinese Wall'' procedures in conformance with OneChicago Rule 616. For purposes of this Rule, ''Other Business Activities'' means (1) conducting an investment or banking or public securities business; (2) making markets in the securities underlying the security futures or options on the securities or indexes underlying the security futures in which the market maker makes markets; or (3) entering agency orders or proprietary orders (other than market-making transactions for OneChicago products) into the OneChicago system. OneChicago Rule 616 would also permit members to conduct proprietary trading in the same physical space as their market-making activities, but only in security futures products that are not within their market-making assignments.[4]

To qualify for the protection afforded by the OneChicago Rule 616 safe harbor, a OneChicago market maker must meet the following conditions: Have an organizational structure that has physical separation between the persons engaged in its market making activities on the Exchange and the persons conducting its ''Other Business Activities''; implement ''Chinese Wall'' procedures to prevent the use of material non-public, corporate or market information in possession of persons on one side of the wall from divulging such information to persons on the other side of the wall; and restrict, with some exceptions,[5] persons from one side of the wall from exercising influence or control over persons on the other side of the wall. As a precondition to relying on proposed OneChicago Rule 616 as a safe harbor for inadvertent cross trades, an Exchange market maker would be required to submit to the Exchange a written statement that sets forth the manner in which it intends to satisfy the conditions described above; the names and titles of the person or persons responsible for maintenance and surveillance of the Chinese Wall procedures; a commitment to provide the Exchange with such information and reports as the Exchange may request; a commitment to take appropriate

[4] The Commission approved a similar provision in International Securities Exchange, Inc. Rule 810 in December 2000. *See* Securities Exchange Act Release No. 43729 (December 15, 2000), 65 FR 81551 (December 26, 2000).

[5] OneChicago proposes two exceptions to OneChicago's Rule 616 Chinese Wall requirement that persons on one side of the wall may not exercise influence or control over persons on the other side of the wall. The first exception permits the market making function and Other Business Activities to be under common management as long as any management oversight does not conflict with or compromise the market maker's responsibilities under OneChicago Rules. The second exception permits the same person or persons to supervise the market-making functions and Other Business Activities to monitor the overall risk exposure of the firm or affiliated firms. This exception does not, however, permit such supervisor to enter orders in the OneChicago System or make trading decisions for either the market-making account or any other proprietary account; provide information to any person performing Other Business Activities with information relating to market-making activity; or provide a person performing the market maker function with information regarding the firm's pending transactions or order flow arising out of its Other Business Activities.

disciplinary action against any person violating proposed OneChicago Rule 616 or the member's internal compliance and audit procedures adopted pursuant to proposed OneChicago Rule 616; the procedures established to ensure that information with respect to clearing activities will not be used to compromise the entity's Chinese Wall; and an acknowledgement that any trading by a person while in possession of material non-public information received as a result of the breach of the internal controls required under proposed OneChicago Rule 616 may be a violation of the Act, the rules and regulations thereunder, the CEA, the CFTC Regulations, or the Rules of the Exchange.

Under paragraph (f) of proposed OneChicago Rule 616, an OneChicago market maker would not be in violation of OneChicago Rules 604, if the Exchange market maker functions as a non-market maker Exchange member exclusively in contracts in which such member is not appointed as a market maker pursuant to OneChicago Rule 515(n) and such member enters orders only for its proprietary account or the accounts of its affiliated entities.

2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with section 6(b)(5) of the Act [6] because it promotes just and equitable principles of trade and is designed to prevent fraudulent and manipulative practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago believes that the proposed new rule will promote competition by offering a safe harbor for market makers executing inadvertent cross trades on the Exchange and thereby removing a significant deterrent to potential market makers for the Exchange's products.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on December 8, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–174. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy 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 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 these filings also will be available for inspection and copying at the principal office of OneChicago. All submissions should refer to File No. SR–OC–2003–09 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31264 Filed 12–18–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 200.30–3(a)(75).

DEPARTMENT OF STATE

[Public Notice 4531]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held at the American Embassy in London, England on January 9, 2004. The Commission will examine and approve public diplomacy subjects for exploration in Fiscal Year 2004.

The Commission was reauthorized pursuant to Pub. L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000).

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Barbara M. Barrett of Arizona, who is the Chairman; Harold C. Pachios of Maine; Ambassador Penne Percy Korth of Washington, DC; Ambassador Elizabeth F. Bagley of Washington, DC; Charles ''Tre'' Evers III of Florida; Jay T. Snyder of New York; and Maria Sophia Aguirre of Washington, DC.

For more information, please contact Matt J. Lauer at (202) 203–7880.

Dated: December 15, 2003.

Matthew Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 03–31355 Filed 12–18–03; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter 9 of the U.S.-Chile Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Determination under Trade Agreements Act of 1979.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476, or Theodore R. Posner, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–9512.

On June 6, 2003, the United State and Chile entered into the United States-Chile Free Trade Agreement (''the USCFTA''). Chapter 9 of the USCFTA sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 9.1 of the USCFTA.

On September 3, 2003, the President signed into law the United States-Chile Free Trade Agreement Implementation Act (''the USCFTA Act'') (Pub. L. No. 108–77, 117 Stat. 909) (19 U.S.C. 3805 note). In section 101(a) of the USCFTA Act, the Congress approved the USCFTA and the statement of administrative action proposed to implement the USCFTA that the President submitted to the Congress.

Section 1–201 of Executive Order 12260 of December 31, 1980 (46 FR 1653) delegated the functions of the President under sections 301 and 302 of the Trade Agreements Act of 1979 (''the Trade Agreements Act'') (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Now, therefore, I, Robert B. Zoellick, United States Trade Representative, in conformity with the provisions of sections 301 and 302 of the Trade Agreements Act, and Executive Order 12260, and in order to carry out U.S. obligations under Chapter 9 of the USCFTA, do hereby determine effective on January 1, 2004, that:

1. Chile is a country, other than a major industrial country, which, pursuant to the USCFTA, will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with section 301(b)(3) of the Trade Agreements Act, Chile is so designated for purposes of section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Chile (*i.e.,* goods and services covered by the Schedules of the United States in Annex 9.1 of the USCFTA) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(A) To United States products and suppliers of such products; or

(B) To eligible products of another foreign country or instrumentality which is party to the Agreement on Government Procurement referred to in section 101(3)(17) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(17)) and suppliers of such products, shall be waived.

This waiver shall be applied by all entities listed in the Schedule of the United States to Section A of Annex 9.1 of the USCFTA, and in list A of the Schedule of the United States to Section C of Annex 9.1 of the USCFTA.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the United States Trade Representative.

Dated: December 16, 2003.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–31372 Filed 12–18–03; 8:45 am]

BILLING CODE 3190–W3–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirement With Respect to Goods and Services Covered by Chapter 13 of the U.S.-Singapore Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Determination under Trade Agreements Act of 1979.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476, or Theodore R. Posner, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–9512.

On May 6, 2003, the United States and Singapore entered into the United States-Singapore Free Trade Agreement (''USSFTA''). Chapter 13 of the USSFTA sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 13A of the USSFTA.

On September 3, 2003, the President signed into law the United States-Singapore Free Trade Agreement Implementation Act (''the USSFTA ACT'') (Pub. L. No. 108–78, 117 Stat. 948) (19 U.S.C. 3805 note). In section 101(a) of the USSFTA Act, the Congress approved the USSFTA and the statement of administrative action proposed to implement the USSFTA that the President submitted to the Congress.

Section 1–201 of Executive Order 12260 of December 31, 1980 (46 FR 1653) delegates the functions of the President under Sections 301 and 302 of the Trade Agreements Act of 1979 (''the Trade Agreements Act'') (19 U.S.C. 2511, 2512) to the United States Trade Representative.

On January 1, 1981, acting pursuant to Executive Order 12260, the Acting United States Trade Representative designated Singapore for purposes of section 301(a) of the Trade Agreements Act, on the basis of Singapore's status as a party to the predecessor to the World Trade Organization Agreement on Government Procurement. Singapore is a party to World Trade Organization Agreement on Government Procurement (''the GPA'') and continues to be designated for purposes of section 301(a) of the Trade Agreements Act.

Under the USSFTA, Singapore will provide reciprocal competitive government procurement opportunities to United States products and suppliers of such products, which are greater than the reciprocal competitive government procurement opportunities Singapore provides to United States products and suppliers of such products under the GPA. Singapore's commitment to provide such reciprocal competitive procurement opportunities constitutes an independent basis for its designation for purposes of section 301(a) of the Trade Agreements Act.

Now, therefore, I, Robert B. Zoellick, United States Trade Representative, in conformity with the provisions of sections 301 and 302 of the Trade Agreements Act, and Executive Order 12260, and in order to carry out U.S. obligations under Chapter 13 of the USSFTA, do hereby determine, effective on January 1, 2004, that:

1. Singapore is a country, other than a major industrial country, which, pursuant to the USSFTA, will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with section 301(b)(3) of the Trade Agreements Act, Singapore is so designated for purposes of section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Singapore (*i.e.,* goods and services covered by the Schedules of the United States in Annex 13A of the USSFTA) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(A) To United States products and suppliers of such products; or

(B) To eligible products of another foreign country or instrumentality which is a party to the GPA and suppliers of such products, shall be waived.

This waiver shall be applied by all entities referred to in Schedules 1.A and 1.C of the United States Annex 13A of the USSFTA.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the United States Trade Representative.

Dated: December 16, 2003.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–31371 Filed 12–18–03; 8:45 am]

BILLING CODE 3190–W3–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procurement Thresholds for Implementation of the Trade Agreements Act of 1979

AGENCY: Office of the United States Trade Representative.

ACTION: Determination of procurement thresholds under the WTO Government Procurement Agreement and Chapter 10 of the North American Free Trade Agreement.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476.

SUMMARY: Executive Order 12260 requires the United States Trade Representative to set the U.S. dollar thresholds for application of Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), which implements U.S. trade agreement obligations, including those under the World Trade Organization (WTO) Government Procurement Agreement and Chapter 10 of the North American Free Trade Agreement (NAFTA). These obligations apply to covered procurements valued at or above specified U.S. dollar thresholds.

Now, therefore, I, Robert B. Zoellick, United States Trade Representative, in conformity with the provisions of Executive Order 12260, and in order to carry out U.S. trade agreement obligations under the WTO Government Procurement Agreement and Chapter 10 of NAFTA, do hereby determine, effective on January 1, 2004:

For the calendar years 2004–2005, the thresholds are as follows:

I. WTO Government Procurement Agreement

A. Central Government Entities listed in U.S. Annex 1:

(1) Procurement of goods and services—$175,000; and

(2) Procurement of construction services—$6,725,000.

B. Sub-Central Government Entities listed in U.S. Annex 2:

(1) Procurement of goods and services—$477,000; and

(2) Procurement of construction services—$6,725,000.

C. Other Entities listed in U.S. Annex 3:

(1) Procurement of goods and services—$538,000; and

(2) Procurement of construction services—$6,725,000.

II. Chapter 10 of the NAFTA

A. Federal Government Entities listed in the U.S. Schedule to Annex 1001.1a–1:

(1) Procurement of goods and services—$58,550; and

(2) Procurement of construction services—$7,611,532.

B. Government Enterprises listed in the U.S. Schedule to Annex 1001.1a–2:

(1) Procurement of goods and services—$292,751; and

(2) Procurement of construction services—$9,368,478.

Dated: December 16, 2003.

Robert B. Zoelick,

United States Trade Representative.

[FR Doc. 03–31373 Filed 12–18–03; 8:45 am]

BILLING CODE 3190–W3–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Three Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 33501 *et seq.*), the FAA invites public comment on two currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, AFP–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0001: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, and Project Status Report. Federal regulations require that all persons report proposed or actual construction and alteration of structures affecting air safety. The reporting requirements as prescribed in 14 CFR part 77 affect any persons or businesses planning to construct or alter a structure that might affect air safety. The current estimated annual reporting burden is 15,500 hours.

2. 2120–0568: Flight Standards Customer Satisfaction Survey. The Flight Standards Service conducts surveys requiring that every element have contact with their customers to assure that their needs are being met and that service is improved. The respondents are air operators, air agencies, and airmen. The current estimated annual reporting burden is 6,667 hours.

Issued in Washington, DC on December 12, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, AFP–100.

[FR Doc. 03–31247 Filed 12–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DoT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published

on April 17, 2003 on page 19066. This information collection activity was originally submitted to OMB for review on 11/12/03. The FAA withdrew the package and resubmitted it to reflect a new estimate. This is a request for renewal of the current collection requirements. The burden hours were reduced because the information is collected every 18 months instead of annually and most covered airports have already submitted their initial plans.

DATES: Comments must be submitted on or before January 20, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Competition Plans, Passenger Facility Charges.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0661.

Forms(s): NA.

Affected Public: A total of 40 public agencies controlling medium or large hub airports.

Abstract: This information is needed to meet the requirements of Title 49, Section 40117(k), Competition Plans, and to carry out a passenger facility charge application. No Passenger Facility Charge (PFC) may be approved for a covered airport and no Airport Improvement Program (AIP) grant may be made for a covered airport unless the airport has submitted a written competition plan in accordance with the statute. The affected public includes public agencies controlling medium or large hub airports.

Estimated Annual Burden Hours: An estimated 4050 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on December 12, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 03–31248 Filed 12–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–75]

Petitions for Exemption; Disposition of Petition Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of a certain petition previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: John F. Linsenmeyer, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–5174.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on December 15, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–9982.

Petitioner: Cessna Aircraft Company.

Section of 14 CFR Affected: 14 CFR 25.785(b).

Description of Relief Sought/Disposition: To amend a previously granted exemption regarding occupant protection requirements for persons occupying multiple-place side-facing seats during takeoff and landing on Cessna Model 680 airplanes manufactured before January 1, 2004. The amendment would remove the limitation that restricts its applicability to airplanes manufactured before January 1, 2004.

Grant of Exemption, 11/24/2003, Exemption No. 7625A.

[FR Doc. 03–31244 Filed 12–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Informal Airspace Workshop; Proposed Instrument Procedures to Runway 24, Ted Stevens Anchorage International Airport, Anchorage, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public workshop.

SUMMARY: The FAA intends to hold two informal airspace workshops to solicit comments regarding operational and environmental concerns from airspace users and others concerning traffic flows for aircraft operating to Runway 24R and Runway 24L at Ted Stevens Anchorage International Airport (ANC). The workshops will be presented on January 20 and January 22, 2004. The purpose of these workshops is to provide interested parties an opportunity to comment on the proposed conversion of a random flight track into a published Charted Visual Flight Procedure (CVFP) to Runway 24R and Runway 24L.

Date/Time: The first workshop will be from 6 p.m. to 9 p.m., Tuesday, January 20, 2004.

Place: Multi-Purpose Room, Spenard Community Recreation Center, 2020 West 48th Avenue, Anchorage, Alaska; telephone: (907) 343–4160.

Date/Time: The second workshop will be from 7 p.m. to 9 p.m., Thursday, January 22, 2004.

Place: Auditorium room 127, University of Alaska Anchorage, Aviation Technology Division, 2811 Merrill Field Drive, Anchorage, Alaska; telephone: (907) 264–7400.

Public Comments: The FAA actively solicits public comments. Comments may be presented at the workshop or submitted afterwards via letter, fax, or email. Comments should be received on or before February 23, 2004, to be included as part of the workshop.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–535, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: *robert.van-haastert@faa.gov.*

SUPPLEMENTARY INFORMATION:

History and Background

Due to mountainous terrain within ten miles east of the ANC, there are no instrument approaches to Runways 24R or 24L. When wind conditions dictate the use of these runways, the only option available for Instrument Flight Rules (IFR) arrivals is a visual approach. Since aircraft on a visual approach are not restricted to a specific route and since high minimum vectoring altitudes prohibit giving subsequent aircraft an extended downwind leg, excessive spacing must be used to ensure aircraft separation.

The establishment of the CVFPs to Runways 24R and 24L would keep aircraft as close to ANC as possible and within Class C airspace to avoid the Seward Highway Segment by heavily used Visual Flight Rules (VFR) aircraft.

The fleet mix and number of aircraft into ANC would not change. The percentage of time Runway 24 would be utilized would also not change. Additionally, the CVFPs would result in a slight average increase in aircraft altitudes over the proposed flight track.

Workshop Agenda

This workshop is intended to involve the community in our decision making process. The workshop will be set up in an open house fashion with stations attended by FAA representatives. These stations are intended to provide information and collect comments on the development of new Charted Visual Flight Procedures for Runway 24R and Runway 24L.

Workshop Procedures

(a) The workshop will be informal in nature and will be conducted by representatives of the FAA Alaskan Region.

(b) The workshop will be open to all persons on a space-available basis. Every effort was made to provide a workshop site with sufficient capacity for expected participation. There will be no admission fee nor other charges to attend and participate.

(c) Representatives of Ted Stevens Anchorage International Airport Traffic Control Tower and Anchorage Terminal Radar Approach Control will be present to discuss procedural concepts. FAA Air Traffic Division representatives will be present to discuss environmental concerns.

(d) Any person who wishes to submit a position paper to FAA representatives pertinent to the establishment of Charted Visual Flight Procedures may do so.

(e) The workshop will not be formally recorded. However, informal tape recordings may be made to ensure that each respondent's comments are noted accurately.

(f) An official verbatim transcript or minutes of the informal airspace workshop will not be made. However, a list of the attendees, written statements received from attendees during and after the workshop and a digest of discussions during the workshop will be included in the administrative record for the project.

(g) Every reasonable effort will be made to hear the concerns of interested persons consistent with a reasonable closing time for the workshop.

Issued in Anchorage, AK, on December 12, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–31245 Filed 12–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34442]

Maritime Rail, LLC—Lease and Operation Exemption—Meadows Industrial Tracks

Maritime Rail, LLC (Maritime Rail), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate certain railroad properties totaling about 3,500 track feet in length. The tracks, which extend beyond a point of connection with a Consolidated Rail Corporation branch line known as Meadows Industrial Track No. 1, are identified on the Exhibit A–1 map attached to the notice of exemption as: (1) An existing lead track that terminates in a track identified on the A–1 map as the ''car loading track'; (2) an existing track identified on the A–1 map as the ''10-car storage track'; (3) an existing track identified on the A–1 map as the ''10-car capacity track for holding empties while loads are pulled'; and (4) a track identified on the A–1 map as the ''10-car capacity loading track,'' which does not now exist but which will be constructed at a later date (this track existed in the past, but it is now paved over). Maritime Rail certifies that its projected annual revenues will not exceed $5 million and that Maritime Rail will be a Class III rail carrier.

Maritime Rail states that it intends to commence operations sometime during the year 2004, specifically 6 to 8 months after the Army Corps of Engineers and the State of New Jersey award a joint contract for a demonstration project involving the dredging of the Passaic River and the treatment of the dredged material. By decision served December 8, 2003, the effective date of Maritime Rail's exemption was postponed to January 8, 2004. Therefore, the earliest the transaction can be consummated is January 8, 2004.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34442, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, Esq., 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 12, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–31221 Filed 12–18–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 976

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 976, Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

DATES: Written comments should be received on or before February 17, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert Coar, 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 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: Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

OMB Number: 1545–0045.

Form Number: Form 976.

Abstract: Form 976 is filed by corporations that wish to claim a deficiency dividend deduction. The deduction allows the corporation to use the payment of dividends to reduce taxes imposed after the tax return is filed. The IRS uses Form 976 to determine if shareholders have included the dividend amounts in gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 7 hrs., 40 min.

Estimated Total Annual Burden Hours: 3,830.

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: December 15, 2003.

Robert Coar,

IRS Reports Clearance Officer.

[FR Doc. 03–31363 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 973

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 Form 973, Corporation Claim for Deduction for Consent Dividends.

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Robert Coar, 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 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: Corporation Claim for Deduction for Consent Dividends.

OMB Number: 1545–0044.

Form Number: Form 973.

Abstract: Corporations file Form 973 to claim a deduction for dividends paid. If shareholders consent and the IRS approves, the corporation may claim a deduction for dividends paid, which reduces the corporation's tax liability. IRS uses Form 973 to determine if shareholders have included the dividend in gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500

Estimated Time Per Respondent: 4 hrs., 25 mins.

Estimated Total Annual Burden Hours: 2,210.

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: December 15, 2003.

Robert Coar,

IRS Reports Clearance Officer.

[FR Doc. 03–31364 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1310

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 Form 1310, Statement of Person Claiming Refund Due A Deceased Taxpayer.

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Robert Coar, 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 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: Statement of Person Claiming Refund Due a Deceased Taxpayer.

OMB Number: 1545–0073.

Form Number: Form 1310.

Abstract: Form 1310 is used by a claimant to secure payment of a refund on behalf of a deceased taxpayer. The information requested on the form enables the IRS to send the refund to the correct person.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 42 min.

Estimated Total Annual Burden Hours: 5,250.

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: December 15, 2003.

Robert Coar,

IRS Reports Clearance Officer.

[FR Doc. 03–31365 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–100–78]

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, LR–100–78 (T.D. 7918), Creditability of Foreign Taxes (§§ 1.901–2 and 1.901–2A).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Robert Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection 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: Creditability of Foreign Taxes.

OMB Number: 1545–0746.

Regulation Project Number: LR–100–78.

Abstract: Section 1.901–2A of the regulation contains special rules that apply to taxpayers engaging in business transactions with a foreign government that is also taxing them. In general, such taxpayers must establish what portion of a payment made pursuant to a foreign levy is actually tax and not compensation for an economic benefit received from the foreign government. One way a taxpayer can do this is by electing to apply the safe harbor formula of section 1,901–2A by filing a statement with the IRS.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 110.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 37.

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: December 15, 2003.

Robert Coar,

IRS Reports Clearance Officer.

[FR Doc. 03–31366 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–80–93]

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, PS–80–93 (TD 8645), Rules for Certain Rental Real Estate Activities (Section 1.469–9).

DATES: Written comments should be received on or before February 17, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation 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: Rules for Certain Rental Real Estate Activities.

OMB Number: 1545–1455.

Regulation Project Number: PS–80–93.

Abstract: This regulation provides rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations of Internal Revenue Code section 469.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20,100.

Estimated Time Per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 3,015 hours.

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: December 15, 2003.

Robert Coar,

IRS Reports Clearance Officer.

[FR Doc. 03–31367 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (via Teleconference)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, January 16, 2004 from 1 p.m. e.s.t. to 2 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, January 16, 2004 from 1 p.m. e.s.t. to 2 p.m. e.s.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Dated: December 15, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–31368 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, January 16, 2004 from 11 a.m. e.d.t to 12:30 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, January 16, 2004, from 11 a.m. e.s.t. to 12:30 p.m. e.s.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include various IRS issues.

Dated: December 15, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–31369 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation notice.

SUMMARY: The open meeting of the E-Filing Issue Committee has been cancelled.

DATES: The meeting was scheduled for Thursday, January 8, 2004, from 3 to 4 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that the meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee scheduled for Thursday, January 8, 2004, from 3 to 4 p.m., Eastern standard time via a telephone conference call has been cancelled. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221.

Dated: December 15, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–31370 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee Meeting

ACTION: Notification of CCAC 2004 public meetings.

SUMMARY: Pursuant to Public Law 108–15, Sec. 103, enacted on April 23, 2003, the Citizens Coinage Advisory Committee (CCAC) announces its meetings for the calendar year 2004. These meetings are open to the public. The purpose of the CCAC is to advise the Secretary of the Treasury on designs pertaining to the coinage of the United States and for other purposes.

February 18, 2004—Philadelphia, PA
April 20, 2004—Washington, DC
May 18, 2004—Washington, DC
June 22, 2004—Washington, DC
August 19, 2004—Pittsburgh, PA
September 21, 2004—Washington, DC
October 19, 2004—Washington, DC
November 16, 2004—Washington, DC

Confirmation of the meetings, as well as meeting times and specific locations, will be announced at least two weeks prior to each meeting. *Interested persons should call 202–354–7502 for the latest update on meeting time and location.*

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional gold medals, and national and other medals produced by the United States Mint;
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be honored by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Melody Grimm; United States Mint Liaison to the CCAC; 801 Ninth Street, NW; Washington, DC 20220, or call 202–354–7606.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to 202–756–6424.

Authority: Pub. L. 108–15 (April 23, 2003).

Dated: December 15, 2003.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 03–31251 Filed 12–18–03; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Medical Care or Services; 2003 Methodology Changes

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In a companion document published as a final rule in this issue of the **Federal Register**, we are amending the Department of Veterans Affairs (VA) medical regulations concerning ''reasonable charges'' for medical care or services provided or furnished by VA to a veteran:

—For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;
—For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or
—For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The final rule includes methodologies for establishing charges for VA medical care and services. Information for calculating actual charge amounts at individual VA facilities using these methodologies is set forth in a notice published in the **Federal Register** on October 2, 2003 (68 FR 56892) as a companion document to the proposed rule containing such methodologies published in the same issue of the **Federal Register**. These charges, with changes explained below, are effective December 19, 2003. Accordingly, interested parties may wish to retain the notice document of October 2 and this notice document for future reference.

When charges for medical care or services provided or furnished at VA expense by either VA or non-VA providers have not been established under other provisions of the final rule, then the alternate methods for determining VA's charges as set forth in the regulations at 38 CFR 17.101(a)(8) will apply.

FOR FURTHER INFORMATION CONTACT: Stephanie Mardon, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0362. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The companion document published as a final rule in this issue of the **Federal Register** includes the methodologies for developing acute inpatient facility charges; skilled nursing facility/sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. Information for calculating actual charge amounts at individual VA facilities using these methodologies is set forth in a notice published in the **Federal Register** on October 2, 2003 (68 FR 56892) as a companion document to the proposed rule containing such methodologies published in the same issue of the **Federal Register**. The October 2 notice document also provided information on the editions of the data sources used to establish the charges, where the various data sources could be obtained, and a list of VA facilities that linked them to their three-digit ZIP Codes. This document makes changes to the October 2 notice document consistent with the provisions of the final rule.

Acute Inpatient Facility Charges

Acute inpatient facility charges by diagnosis related group (DRG) are set forth in Table A in the October 2 notice document. Those charges were based on 2003 DRGs. Table A in the October 2 notice document is being replaced by Table A in this notice, which provides updated charges based on 2004 DRGs.

Physician and Other Professional Charges

Relative value units (RVUs) and other information for physician and other professional services are set forth in Table G in the October 2 notice document. In Table G, the absence of a modifier indicates that the code is a global service, the presence of modifier –26 indicates a professional component, and the presence of modifier –TC indicates a technical component. Upon further review, we have determined that several codes presented with –26 and –TC modifiers should instead be presented as global services. Table G in this notice lists the changes that we are making to Table G in the October 2 notice document.

Charges for Durable Medical Equipment, Drugs, Injectables, and Other Medical Services, Items, and Supplies Identified by HCPCS Level II Codes

Charges for durable medical equipment, drugs, injectables, and other medical services, items and supplies identified by HCPCS Level II Codes are set forth in Table K in the October 2 notice document. Table K contained 28 HCPCS Codes for which we listed the code but did not provide a charge. We are changing Table K to delete those codes that have no charge.

Table K in the October 2 notice document included 71 HCPCS codes for which we listed four versions of each code: new (modifier NU), rental (modifier RR), used (modifier UE), and global (no modifier). We are changing Table K to delete the non-modified versions of these codes and their associated charges.

Table K in the October 2 notice document included 21 HCPCS codes that included only new (modifier NU) and global (no modifier) versions. We are changing Table K to delete the NU-modified versions of these codes and their associated charges.

Table K in the October 2 notice document included 8 HCPCS codes associated with facial prostheses that included new impression (modifier KM), previous impression (modifier KN), and non-modified versions. We are changing Table K to delete the non-modified versions of these codes and their associated charges.

Table K in the October 2 notice document contained five ambiguous HCPCS code-modifier pairs that were presented with a rental (RR) modifier and also with no modifier. For these five codes (E0749, E0784, E1510, K0012, and K0195), we have assigned the non-modified version to be new, and have appended the NU modifier accordingly.

Table K in the October 2 notice document included only one entry for HCPCS code E0780, modified with NU. For purposes of clarity, we have changed this code to be non-modified.

Table K in the October 2 notice document included two charges for HCPCS code B9002, one for a new item (modifier NU) and one for rental of this equipment (modifier RR). We inadvertently omitted the charge for B9002–UE, for used equipment, and are now adding that code-modifier combination and its associated charge.

Table K in this notice lists the codes that we are adding, changing, and deleting versus Table K in the October 2 notice document.

Data Sources

The editions of the data sources used to establish the charges are set forth in Supplementary Table 1 in the October 2 notice document. We used updated data sources to establish the updated acute inpatient facility charges set forth in Table A in this notice. Accordingly, Supplementary Table 1 in this notice lists the updated data sources that we used to update our acute inpatient facility charges.

List of VA Medical Facility Locations

In Supplementary Table 3 in the October 2 notice document, we set forth the list of VA medical facility locations and their three-digit ZIP Codes. One of the provisions of the final rule is to designate each VA facility as either provider-based or non-provider-based. Accordingly, Supplementary Table 3 in the October 2 notice document is being replaced by Supplementary Table 3 in this notice, which is updated to add the current provider-based/non-provider-based designation of each VA facility, and to make additions, changes, and deletions to the list of VA facilities. Consistent with the final rule, subsequent updates to Supplementary Table 3 will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo,* under ''Charge Data.''

Approved: December 10, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

BILLING CODE 8320–01–P

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

PAGE 1 OF 8

DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
001	CRANIOTOMY AGE >17 W CC	S	$1,225.90	$2,604.29	$4,960.23
002	CRANIOTOMY AGE >17 W/O CC	S	$1,207.83	$2,719.97	$6,650.26
003	CRANIOTOMY AGE 0-17	S	$1,330.34	$2,857.53	$5,768.09
004	NO LONGER VALID	S	$0.00	$0.00	$0.00
005	NO LONGER VALID	S	$0.00	$0.00	$0.00
006	CARPAL TUNNEL RELEASE	S	$1,055.04	$2,061.69	$3,934.06
007	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	S	$1,176.41	$2,163.97	$3,512.72
008	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	S	$982.13	$1,989.27	$7,846.54
009	SPINAL DISORDERS & INJURIES	N	$954.38	$2,266.79	$1,529.94
010	NERVOUS SYSTEM NEOPLASMS W CC	N	$1,164.41	$2,202.16	$2,118.17
011	NERVOUS SYSTEM NEOPLASMS W/O CC	N	$917.47	$1,649.77	$1,714.21
012	DEGENERATIVE NERVOUS SYSTEM DISORDERS	N	$959.85	$1,608.78	$849.87
013	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	N	$738.56	$1,502.49	$1,099.38
014	INTRACRANIAL HEMORRHAGE & STROKE W INFARCT	N	$957.30	$1,914.58	$2,043.69
015	NONSPECIFIC CVA & PRECEREBRAL OCCLUSION W/O INFARCT	N	$800.26	$1,606.59	$1,758.22
016	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	N	$1,083.52	$1,980.08	$2,315.47
017	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	N	$833.81	$1,559.91	$1,740.99
018	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	N	$927.37	$1,688.72	$1,837.33
019	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	N	$995.65	$1,696.61	$2,059.36
020	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	N	$1,024.84	$2,054.97	$2,877.11
021	VIRAL MENINGITIS	N	$1,080.72	$2,107.94	$2,845.63
022	HYPERTENSIVE ENCEPHALOPATHY	N	$907.09	$1,927.63	$2,168.10
023	NONTRAUMATIC STUPOR & COMA	N	$1,081.22	$2,036.11	$2,076.25
024	SEIZURE & HEADACHE AGE >17 W CC	N	$1,028.33	$1,866.69	$2,094.08
025	SEIZURE & HEADACHE AGE >17 W/O CC	N	$1,052.06	$1,872.13	$1,906.94
026	SEIZURE & HEADACHE AGE 0-17	N	$1,806.89	$3,262.71	$3,581.62
027	TRAUMATIC STUPOR & COMA, COMA >1 HR	N	$1,161.48	$2,620.57	$2,714.13
028	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	N	$1,036.98	$2,234.45	$2,021.54
029	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	N	$1,000.33	$2,253.33	$1,623.05
030	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	N	$865.02	$1,884.13	$1,630.53
031	CONCUSSION AGE >17 W CC	N	$1,460.60	$2,910.93	$3,025.93
032	CONCUSSION AGE >17 W/O CC	N	$1,183.77	$2,238.65	$2,491.54
033	CONCUSSION AGE 0-17	N	$1,333.85	$2,640.72	$2,774.68
034	OTHER DISORDERS OF NERVOUS SYSTEM W CC	N	$883.58	$1,825.73	$1,647.13
035	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	N	$815.36	$1,532.54	$1,374.95
036	RETINAL PROCEDURES	S	$1,225.91	$2,150.97	$7,437.87
037	ORBITAL PROCEDURES	S	$1,195.24	$2,556.77	$4,300.20
038	PRIMARY IRIS PROCEDURES	S	$1,288.06	$1,611.17	$2,266.77
039	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	S	$1,311.11	$1,975.62	$4,501.63
040	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	S	$1,120.83	$2,095.33	$3,340.39
041	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	S	$1,120.83	$2,095.33	$3,340.39
042	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	S	$1,285.90	$2,514.95	$3,976.71
043	HYPHEMA	N	$1,303.57	$2,255.87	$1,470.25
044	ACUTE MAJOR EYE INFECTIONS	N	$1,125.80	$1,538.66	$1,343.48
045	NEUROLOGICAL EYE DISORDERS	N	$995.77	$1,807.40	$2,451.85
046	OTHER DISORDERS OF THE EYE AGE >17 W CC	N	$1,160.75	$1,964.43	$1,944.55
047	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	N	$998.82	$1,532.14	$1,414.41
048	OTHER DISORDERS OF THE EYE AGE 0-17	N	$1,050.32	$1,744.68	$1,694.71
049	MAJOR HEAD & NECK PROCEDURES	S	$1,048.25	$2,190.32	$5,900.62
050	SIALOADENECTOMY	S	$1,150.02	$2,536.85	$7,278.28
051	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	S	$1,244.70	$2,290.39	$4,897.78
052	CLEFT LIP & PALATE REPAIR	S	$1,190.10	$1,849.10	$6,067.64
053	SINUS & MASTOID PROCEDURES AGE >17	S	$982.55	$2,129.71	$4,694.53
054	SINUS & MASTOID PROCEDURES AGE 0-17	S	$982.55	$2,129.71	$4,694.53
055	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	S	$1,103.42	$2,177.86	$4,262.52
056	RHINOPLASTY	S	$1,518.39	$3,142.43	$5,959.10
057	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	S	$1,068.53	$2,273.69	$3,773.26
058	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	S	$1,068.53	$2,273.69	$3,773.26
059	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	S	$937.28	$3,380.96	$5,292.28
060	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	S	$937.28	$3,380.96	$5,292.28
061	MYRINGOTOMY W TUBE INSERTION AGE >17	S	$1,212.84	$2,203.93	$3,466.17
062	MYRINGOTOMY W TUBE INSERTION AGE 0-17	S	$1,212.84	$2,203.93	$3,466.17
063	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	S	$1,266.16	$2,535.88	$5,004.26
064	EAR, NOSE, MOUTH & THROAT MALIGNANCY	N	$1,203.56	$2,153.91	$2,222.19
065	DYSEQUILIBRIUM	N	$1,071.13	$1,864.85	$2,141.09
066	EPISTAXIS	N	$1,106.90	$2,186.66	$1,971.62
067	EPIGLOTTITIS	N	$1,038.42	$2,260.84	$2,154.92
068	OTITIS MEDIA & URI AGE >17 W CC	N	$898.63	$1,718.27	$1,842.83
069	OTITIS MEDIA & URI AGE >17 W/O CC	N	$831.58	$1,449.57	$1,604.83
070	OTITIS MEDIA & URI AGE 0-17	N	$949.06	$1,788.99	$1,922.90
071	LARYNGOTRACHEITIS	N	$1,167.78	$1,140.38	$1,727.27
072	NASAL TRAUMA & DEFORMITY	N	$1,554.65	$3,099.84	$2,945.93

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

PAGE 2 OF 8

DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
073	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	N	$1,096.70	$2,142.28	$2,104.03
074	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	N	$1,437.98	$2,808.93	$2,758.78
075	MAJOR CHEST PROCEDURES	S	$1,117.69	$2,087.99	$4,085.43
076	OTHER RESP SYSTEM O.R. PROCEDURES W CC	S	$1,193.18	$2,205.90	$3,379.79
077	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	S	$1,097.16	$1,943.78	$3,295.13
078	PULMONARY EMBOLISM	N	$925.51	$1,681.04	$2,099.07
079	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	N	$1,034.59	$1,866.08	$2,224.57
080	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	N	$999.53	$1,771.90	$1,750.12
081	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	N	$1,022.48	$1,847.69	$2,186.88
082	RESPIRATORY NEOPLASMS	N	$975.05	$1,669.98	$2,108.57
083	MAJOR CHEST TRAUMA W CC	N	$988.60	$1,876.92	$1,828.61
084	MAJOR CHEST TRAUMA W/O CC	N	$1,093.34	$2,116.04	$1,665.64
085	PLEURAL EFFUSION W CC	N	$1,016.92	$1,725.69	$2,218.91
086	PLEURAL EFFUSION W/O CC	N	$1,093.24	$1,717.15	$2,205.68
087	PULMONARY EDEMA & RESPIRATORY FAILURE	N	$1,027.85	$1,992.13	$2,617.41
088	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	N	$887.72	$1,628.38	$1,826.12
089	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	N	$956.47	$1,748.54	$1,931.04
090	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	N	$878.50	$1,505.92	$1,515.40
091	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	N	$1,087.02	$1,989.44	$2,176.47
092	INTERSTITIAL LUNG DISEASE W CC	N	$976.55	$1,753.69	$2,099.04
093	INTERSTITIAL LUNG DISEASE W/O CC	N	$987.94	$1,751.91	$2,034.31
094	PNEUMOTHORAX W CC	N	$878.99	$1,696.28	$1,864.89
095	PNEUMOTHORAX W/O CC	N	$880.93	$1,557.28	$1,464.43
096	BRONCHITIS & ASTHMA AGE >17 W CC	N	$854.02	$1,596.28	$1,716.65
097	BRONCHITIS & ASTHMA AGE >17 W/O CC	N	$862.51	$1,582.74	$1,567.10
098	BRONCHITIS & ASTHMA AGE 0-17	N	$1,141.19	$2,120.42	$2,230.15
099	RESPIRATORY SIGNS & SYMPTOMS W CC	N	$1,003.11	$1,697.72	$2,593.57
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	N	$883.26	$1,445.67	$2,469.83
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	N	$1,078.11	$1,960.42	$2,383.83
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	N	$1,094.63	$1,926.26	$2,467.38
103	HEART TRANSPLANT	S	$981.47	$2,568.71	$7,907.17
104	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W CARD CATH	S	$1,428.04	$2,518.56	$8,794.04
105	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W/O CARD CATH	S	$1,325.02	$2,370.34	$9,089.62
106	CORONARY BYPASS W PTCA	S	$1,108.92	$2,203.91	$10,336.45
107	CORONARY BYPASS W CARDIAC CATH	S	$1,108.11	$2,012.86	$7,577.71
108	OTHER CARDIOTHORACIC PROCEDURES	S	$1,302.77	$2,485.63	$8,864.05
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	S	$1,196.37	$2,096.76	$7,742.83
110	MAJOR CARDIOVASCULAR PROCEDURES W CC	S	$1,079.74	$2,107.46	$6,369.19
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	S	$922.46	$1,770.68	$8,117.30
112	NO LONGER VALID	S	$0.00	$0.00	$0.00
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	S	$1,095.92	$2,110.66	$2,872.41
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	S	$1,011.93	$1,795.64	$2,146.89
115	PRM CARD PACEM IMPL W AMI/HR/SHOCK OR AICD LEAD OR GNRTR	S	$1,386.02	$2,264.42	$7,928.48
116	OTHER PERMANENT CARDIAC PACEMAKER IMPLANT	S	$1,176.30	$1,889.15	$8,062.30
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	S	$1,325.11	$2,182.33	$5,057.37
118	CARDIAC PACEMAKER DEVICE REPLACEMENT	S	$1,456.60	$2,166.43	$9,761.32
119	VEIN LIGATION & STRIPPING	S	$1,280.63	$2,180.51	$3,550.17
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	S	$1,197.71	$2,142.97	$3,309.41
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE	N	$1,292.81	$2,306.87	$3,127.21
122	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE	N	$1,394.89	$2,540.26	$4,222.53
123	CIRCULATORY DISORDERS W AMI, EXPIRED	N	$1,133.28	$2,165.64	$3,840.15
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	N	$1,282.43	$2,107.79	$4,926.10
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	N	$1,178.49	$1,932.36	$6,218.40
126	ACUTE & SUBACUTE ENDOCARDITIS	N	$1,390.93	$2,324.50	$2,796.00
127	HEART FAILURE & SHOCK	N	$967.08	$1,737.12	$1,887.83
128	DEEP VEIN THROMBOPHLEBITIS	N	$983.79	$1,698.99	$1,287.18
129	CARDIAC ARREST, UNEXPLAINED	N	$607.43	$1,415.76	$2,911.39
130	PERIPHERAL VASCULAR DISORDERS W CC	N	$968.95	$1,824.99	$1,637.44
131	PERIPHERAL VASCULAR DISORDERS W/O CC	N	$986.71	$1,843.70	$1,383.21
132	ATHEROSCLEROSIS W CC	N	$1,479.55	$2,642.60	$3,164.97
133	ATHEROSCLEROSIS W/O CC	N	$1,805.35	$3,595.08	$3,561.18
134	HYPERTENSION	N	$961.04	$1,602.41	$1,820.69
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	N	$1,047.48	$1,939.85	$1,940.14
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	N	$1,045.13	$1,967.49	$1,621.94
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	N	$1,043.37	$1,929.79	$1,896.36
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	N	$1,127.10	$1,852.32	$2,243.64
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	N	$1,128.53	$1,817.82	$2,202.42
140	ANGINA PECTORIS	N	$1,007.16	$1,847.04	$2,429.99
141	SYNCOPE & COLLAPSE W CC	N	$1,224.94	$1,980.70	$2,297.34
142	SYNCOPE & COLLAPSE W/O CC	N	$1,098.79	$1,739.12	$2,164.88
143	CHEST PAIN	N	$1,107.94	$1,790.53	$3,104.87
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	N	$1,090.68	$1,990.12	$2,696.55

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

PAGE 3 OF 8

DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	N	$1,168.84	$2,025.20	$2,630.79
146	RECTAL RESECTION W CC	S	$1,177.23	$2,370.27	$3,908.58
147	RECTAL RESECTION W/O CC	S	$1,100.60	$2,388.71	$3,347.31
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	S	$975.17	$2,022.42	$3,516.97
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	S	$1,007.66	$2,060.66	$3,200.75
150	PERITONEAL ADHESIOLYSIS W CC	S	$957.31	$1,966.93	$3,147.06
151	PERITONEAL ADHESIOLYSIS W/O CC	S	$890.68	$1,757.18	$2,830.66
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	S	$921.05	$1,812.92	$3,098.41
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	S	$1,013.67	$1,862.92	$2,949.44
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	S	$1,139.14	$2,396.31	$4,388.11
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	S	$1,096.90	$2,459.62	$5,297.36
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	S	$923.60	$1,955.52	$3,621.58
157	ANAL & STOMAL PROCEDURES W CC	S	$1,207.63	$2,420.76	$3,488.01
158	ANAL & STOMAL PROCEDURES W/O CC	S	$958.50	$1,548.91	$3,428.73
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	S	$970.96	$1,894.39	$3,612.98
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	S	$941.30	$1,883.15	$4,306.17
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	S	$1,271.82	$2,401.70	$4,106.83
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	S	$1,075.69	$1,832.14	$4,776.99
163	HERNIA PROCEDURES AGE 0-17	S	$1,060.16	$2,053.66	$4,013.43
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	S	$964.92	$1,930.35	$3,570.98
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	S	$935.43	$1,700.31	$3,583.22
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	S	$1,000.02	$2,203.23	$4,073.25
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	S	$983.82	$1,598.11	$5,153.06
168	MOUTH PROCEDURES W CC	S	$1,218.54	$2,856.00	$4,205.77
169	MOUTH PROCEDURES W/O CC	S	$1,086.44	$2,125.73	$4,904.77
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	S	$1,151.81	$2,226.94	$3,510.03
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	S	$967.12	$1,904.46	$3,992.30
172	DIGESTIVE MALIGNANCY W CC	N	$1,130.90	$2,088.32	$2,222.82
173	DIGESTIVE MALIGNANCY W/O CC	N	$968.76	$1,851.07	$1,669.03
174	G.I. HEMORRHAGE W CC	N	$1,056.84	$2,042.24	$2,413.15
175	G.I. HEMORRHAGE W/O CC	N	$1,000.78	$1,926.53	$2,002.58
176	COMPLICATED PEPTIC ULCER	N	$982.73	$1,827.65	$2,386.67
177	UNCOMPLICATED PEPTIC ULCER W CC	N	$970.01	$1,681.81	$2,368.37
178	UNCOMPLICATED PEPTIC ULCER W/O CC	N	$936.58	$1,786.89	$2,461.18
179	INFLAMMATORY BOWEL DISEASE	N	$1,059.70	$1,869.29	$2,057.71
180	G.I. OBSTRUCTION W CC	N	$993.78	$1,835.40	$1,945.71
181	G.I. OBSTRUCTION W/O CC	N	$1,021.02	$1,754.54	$1,662.98
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	N	$989.10	$1,766.09	$2,078.50
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	N	$965.26	$1,593.39	$2,180.00
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	N	$951.37	$1,678.04	$2,026.19
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	N	$1,037.09	$2,056.52	$2,119.14
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	N	$1,037.09	$2,056.52	$2,119.14
187	DENTAL EXTRACTIONS & RESTORATIONS	N	$1,193.80	$1,929.48	$3,046.93
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	N	$1,038.34	$1,905.75	$2,202.05
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	N	$1,209.85	$2,391.83	$2,309.12
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	N	$1,178.53	$2,166.93	$2,478.01
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC	S	$1,287.69	$2,747.86	$5,109.09
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	S	$1,063.86	$2,352.79	$4,099.25
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC	S	$1,227.71	$2,602.03	$4,023.08
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC	S	$984.39	$2,036.64	$3,267.24
195	CHOLECYSTECTOMY W C.D.E. W CC	S	$1,066.64	$2,221.16	$4,025.77
196	CHOLECYSTECTOMY W C.D.E. W/O CC	S	$1,077.00	$1,841.52	$4,184.58
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC	S	$1,048.02	$2,128.71	$3,748.03
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC	S	$919.58	$1,720.02	$3,599.46
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	S	$1,081.39	$2,543.99	$3,562.51
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	S	$1,158.28	$2,325.50	$4,130.05
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	S	$1,230.04	$2,438.62	$3,595.39
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	N	$1,056.57	$2,149.69	$2,423.18
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	N	$1,070.97	$1,970.95	$2,293.66
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	N	$943.00	$1,788.11	$2,304.77
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	N	$1,175.45	$2,338.02	$2,557.12
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	N	$960.71	$1,909.75	$1,960.88
207	DISORDERS OF THE BILIARY TRACT W CC	N	$1,119.77	$2,035.92	$2,810.75
208	DISORDERS OF THE BILIARY TRACT W/O CC	N	$1,169.03	$1,828.16	$2,989.22
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY	S	$1,013.47	$2,045.29	$6,540.49
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	S	$1,044.90	$2,024.92	$3,560.59
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	S	$1,193.11	$2,199.62	$4,010.88
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	S	$1,021.38	$1,974.74	$3,473.29
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	S	$1,104.02	$2,268.72	$2,897.62
214	NO LONGER VALID	S	$0.00	$0.00	$0.00
215	NO LONGER VALID	S	$0.00	$0.00	$0.00
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	S	$1,035.24	$2,066.58	$3,425.03

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	S	$1,398.34	$2,765.71	$3,523.62
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	S	$1,015.54	$2,092.74	$3,891.35
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	S	$1,045.98	$2,002.65	$4,849.86
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	S	$1,221.73	$2,527.45	$4,997.57
221	NO LONGER VALID	S	$0.00	$0.00	$0.00
222	NO LONGER VALID	S	$0.00	$0.00	$0.00
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	S	$1,100.40	$2,146.44	$5,511.94
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	S	$1,005.15	$1,976.67	$6,395.16
225	FOOT PROCEDURES	S	$1,277.77	$2,461.34	$3,524.58
226	SOFT TISSUE PROCEDURES W CC	S	$1,038.59	$1,965.70	$2,977.99
227	SOFT TISSUE PROCEDURES W/O CC	S	$1,058.17	$2,021.13	$4,578.39
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	S	$1,098.48	$2,784.97	$4,145.14
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	S	$1,136.39	$1,733.34	$4,776.83
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	S	$1,006.00	$1,692.59	$3,454.89
231	NO LONGER VALID	S	$0.00	$0.00	$0.00
232	ARTHROSCOPY	S	$1,129.93	$1,464.06	$5,878.52
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	S	$1,081.53	$2,358.75	$4,063.28
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	S	$943.38	$1,872.88	$5,915.08
235	FRACTURES OF FEMUR	N	$826.86	$1,700.47	$1,129.14
236	FRACTURES OF HIP & PELVIS	N	$734.58	$1,705.94	$959.08
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	N	$1,097.86	$2,377.63	$1,653.71
238	OSTEOMYELITIS	N	$965.13	$1,703.08	$1,444.64
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	N	$1,119.92	$2,067.86	$1,756.69
240	CONNECTIVE TISSUE DISORDERS W CC	N	$1,051.03	$2,007.90	$2,242.98
241	CONNECTIVE TISSUE DISORDERS W/O CC	N	$1,111.44	$2,152.32	$1,749.56
242	SEPTIC ARTHRITIS	N	$1,033.54	$1,806.01	$1,633.96
243	MEDICAL BACK PROBLEMS	N	$1,003.69	$2,008.03	$1,582.96
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	N	$851.24	$1,985.68	$1,114.56
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	N	$997.60	$2,223.20	$1,073.84
246	NON-SPECIFIC ARTHROPATHIES	N	$888.07	$1,969.65	$1,043.21
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	N	$993.64	$1,767.13	$1,563.33
248	TENDONITIS, MYOSITIS & BURSITIS	N	$1,057.46	$2,079.87	$1,660.26
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	N	$1,148.89	$2,332.04	$1,822.37
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	N	$998.99	$1,959.41	$1,496.18
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	N	$1,020.03	$2,171.61	$1,426.82
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	N	$1,001.75	$2,017.02	$1,470.03
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	N	$922.66	$1,807.48	$1,345.03
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	N	$1,085.08	$1,952.05	$1,219.59
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	N	$964.60	$1,890.74	$1,315.89
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	N	$866.11	$1,641.61	$1,224.97
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC	S	$1,060.43	$1,989.11	$5,128.68
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	S	$968.61	$1,800.55	$5,919.68
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	S	$1,201.06	$2,046.61	$5,111.37
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	S	$1,099.94	$2,147.64	$7,803.05
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	S	$1,023.85	$1,541.82	$6,807.31
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	S	$1,004.43	$1,893.95	$2,899.47
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	S	$954.43	$1,747.96	$1,848.66
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	S	$955.65	$1,377.03	$1,709.45
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	S	$1,456.55	$3,354.45	$4,365.76
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	S	$1,203.79	$2,326.64	$4,353.69
267	PERIANAL & PILONIDAL PROCEDURES	S	$982.57	$1,732.44	$3,146.81
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	S	$1,139.50	$2,387.05	$5,403.97
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	S	$1,003.99	$1,983.68	$2,465.84
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	S	$1,006.38	$1,893.02	$2,826.84
271	SKIN ULCERS	N	$857.08	$1,428.11	$1,267.45
272	MAJOR SKIN DISORDERS W CC	N	$1,118.70	$2,361.38	$1,907.25
273	MAJOR SKIN DISORDERS W/O CC	N	$962.82	$1,848.73	$1,597.84
274	MALIGNANT BREAST DISORDERS W CC	N	$1,206.92	$2,018.76	$1,854.99
275	MALIGNANT BREAST DISORDERS W/O CC	N	$1,227.62	$1,664.64	$1,124.34
276	NON-MALIGANT BREAST DISORDERS	N	$1,247.63	$2,138.96	$1,790.74
277	CELLULITIS AGE >17 W CC	N	$1,030.66	$1,805.23	$1,475.98
278	CELLULITIS AGE >17 W/O CC	N	$962.95	$1,592.51	$1,115.72
279	CELLULITIS AGE 0-17	N	$1,126.59	$1,979.51	$1,555.89
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	N	$1,063.86	$2,038.89	$1,736.23
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	N	$1,049.78	$2,098.07	$1,536.29
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	N	$1,055.96	$2,044.96	$1,680.44
283	MINOR SKIN DISORDERS W CC	N	$1,033.31	$1,698.11	$1,595.20
284	MINOR SKIN DISORDERS W/O CC	N	$1,003.45	$2,062.73	$1,225.75
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	S	$1,049.56	$1,795.20	$2,314.98
286	ADRENAL & PITUITARY PROCEDURES	S	$1,022.24	$2,234.56	$5,000.94
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	S	$1,284.64	$2,389.60	$2,185.73
288	O.R. PROCEDURES FOR OBESITY	S	$985.63	$2,293.09	$6,886.22

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
289	PARATHYROID PROCEDURES	S	$1,017.56	$2,111.47	$5,291.48
290	THYROID PROCEDURES	S	$1,068.03	$2,394.03	$6,191.23
291	THYROGLOSSAL PROCEDURES	S	$1,137.05	$1,137.28	$6,495.94
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	S	$1,214.38	$2,198.51	$3,341.08
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	S	$1,149.36	$3,297.12	$4,483.80
294	DIABETES AGE >35	N	$1,010.62	$1,850.39	$1,585.78
295	DIABETES AGE 0-35	N	$925.05	$1,831.16	$2,076.08
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	N	$1,010.99	$1,799.12	$1,746.62
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	N	$956.23	$1,665.50	$1,392.69
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	N	$996.15	$1,771.11	$1,693.08
299	INBORN ERRORS OF METABOLISM	N	$1,028.31	$2,059.68	$2,201.73
300	ENDOCRINE DISORDERS W CC	N	$1,125.68	$1,994.57	$1,980.72
301	ENDOCRINE DISORDERS W/O CC	N	$1,067.82	$1,852.66	$1,660.88
302	KIDNEY TRANSPLANT	S	$1,383.94	$2,775.28	$11,908.68
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	S	$1,081.42	$2,225.20	$4,128.93
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	S	$1,286.68	$2,521.81	$4,157.43
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	S	$1,031.03	$2,388.73	$5,148.86
306	PROSTATECTOMY W CC	S	$1,088.55	$1,969.44	$2,974.34
307	PROSTATECTOMY W/O CC	S	$850.39	$1,971.38	$3,741.42
308	MINOR BLADDER PROCEDURES W CC	S	$1,083.74	$2,122.27	$3,381.72
309	MINOR BLADDER PROCEDURES W/O CC	S	$824.78	$1,557.71	$5,667.51
310	TRANSURETHRAL PROCEDURES W CC	S	$1,196.54	$2,118.11	$3,625.85
311	TRANSURETHRAL PROCEDURES W/O CC	S	$1,079.84	$2,147.30	$4,951.44
312	URETHRAL PROCEDURES, AGE >17 W CC	S	$1,089.69	$1,855.01	$3,242.05
313	URETHRAL PROCEDURES, AGE >17 W/O CC	S	$1,122.79	$2,277.86	$4,756.71
314	URETHRAL PROCEDURES, AGE 0-17	S	$1,184.98	$2,037.39	$3,756.95
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	S	$1,160.70	$2,043.47	$4,028.38
316	RENAL FAILURE	N	$936.43	$1,732.83	$1,956.45
317	ADMIT FOR RENAL DIALYSIS	N	$1,035.18	$1,654.36	$3,180.96
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	N	$1,143.46	$2,139.98	$2,278.70
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	N	$797.97	$1,315.22	$1,424.37
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	N	$962.51	$1,742.13	$1,639.84
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	N	$958.73	$1,668.59	$1,469.13
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	N	$1,126.94	$2,041.23	$1,900.12
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	N	$1,044.92	$1,867.98	$3,312.97
324	URINARY STONES W/O CC	N	$913.22	$1,389.48	$2,972.08
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	N	$1,178.27	$2,118.36	$1,812.40
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	N	$958.98	$1,405.21	$1,459.66
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	N	$1,114.84	$1,981.44	$1,712.50
328	URETHRAL STRICTURE AGE >17 W CC	N	$1,287.38	$2,713.97	$2,652.60
329	URETHRAL STRICTURE AGE >17 W/O CC	N	$1,233.23	$1,300.86	$3,415.35
330	URETHRAL STRICTURE AGE 0-17	N	$1,317.12	$2,760.56	$2,780.02
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	N	$1,062.53	$1,897.76	$2,246.81
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	N	$907.36	$1,518.60	$1,816.66
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	N	$1,225.86	$2,183.81	$2,583.92
334	MAJOR MALE PELVIC PROCEDURES W CC	S	$982.01	$2,052.50	$4,598.97
335	MAJOR MALE PELVIC PROCEDURES W/O CC	S	$925.22	$1,989.12	$5,302.80
336	TRANSURETHRAL PROSTATECTOMY W CC	S	$983.12	$1,883.11	$3,351.16
337	TRANSURETHRAL PROSTATECTOMY W/O CC	S	$928.89	$1,740.78	$4,113.66
338	TESTES PROCEDURES, FOR MALIGNANCY	S	$962.83	$1,711.37	$3,345.14
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	S	$970.74	$2,046.11	$2,936.25
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	S	$970.74	$2,046.11	$2,936.25
341	PENIS PROCEDURES	S	$1,123.13	$2,229.03	$6,926.67
342	CIRCUMCISION AGE >17	S	$839.26	$1,565.74	$3,318.33
343	CIRCUMCISION AGE 0-17	S	$839.26	$1,565.74	$3,318.33
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	S	$1,144.88	$1,819.21	$7,690.71
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	S	$1,241.92	$2,101.79	$3,184.57
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	N	$1,080.55	$2,075.15	$1,906.71
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	N	$837.44	$1,101.13	$1,123.61
348	BENIGN PROSTATIC HYPERTROPHY W CC	N	$1,211.86	$2,209.27	$2,027.03
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	N	$1,410.02	$1,649.80	$2,112.78
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	N	$1,016.46	$1,756.18	$1,786.71
351	STERILIZATION, MALE	N	$851.92	$1,651.12	$2,341.02
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	N	$1,128.87	$2,307.50	$2,106.20
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	S	$1,359.78	$2,848.69	$5,158.90
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	S	$1,106.73	$2,324.61	$3,720.92
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	S	$1,079.02	$2,623.92	$4,200.67
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	S	$823.33	$1,696.42	$5,171.91
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	S	$1,185.70	$2,502.20	$4,211.79
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	S	$951.41	$1,904.90	$4,025.83
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	S	$886.20	$1,715.36	$4,487.56
360	VAGINA, CERVIX & VULVA PROCEDURES	S	$923.47	$2,018.45	$4,568.93

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	S	$813.97	$1,388.64	$4,308.59
362	ENDOSCOPIC TUBAL INTERRUPTION	S	$841.80	$1,703.01	$4,058.23
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	S	$1,249.55	$2,460.28	$3,730.02
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	S	$1,402.34	$2,103.00	$3,219.80
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	S	$1,094.15	$2,298.36	$3,645.43
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	N	$985.32	$2,095.00	$1,828.74
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	N	$1,037.94	$3,386.64	$1,618.01
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	N	$986.28	$1,923.00	$1,827.91
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	N	$1,483.04	$2,668.18	$2,595.67
370	CESAREAN SECTION W CC	S	$990.71	$2,306.15	$2,339.91
371	CESAREAN SECTION W/O CC	S	$982.16	$1,747.09	$2,435.23
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	N	$1,032.43	$2,212.04	$2,229.88
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	N	$990.65	$2,544.56	$2,161.97
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	S	$1,158.08	$1,913.03	$3,615.41
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	S	$466.37	$943.50	$2,248.34
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	N	$948.45	$2,240.01	$2,046.65
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	S	$1,057.07	$1,362.29	$3,432.99
378	ECTOPIC PREGNANCY	N	$928.87	$1,441.22	$4,437.02
379	THREATENED ABORTION	N	$1,028.03	$1,428.31	$1,437.67
380	ABORTION W/O D&C	N	$1,206.70	$1,530.28	$2,901.18
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	S	$1,091.46	$2,356.37	$4,137.57
382	FALSE LABOR	N	$1,024.67	$7,295.33	$1,491.10
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	N	$1,045.36	$1,975.62	$1,342.24
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	N	$956.51	$2,424.69	$1,693.41
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	N	$1,643.79	$3,020.69	$3,004.36
386	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	N	$1,469.28	$2,699.98	$2,685.38
387	PREMATURITY W MAJOR PROBLEMS	N	$1,305.74	$2,399.47	$2,386.50
388	PREMATURITY W/O MAJOR PROBLEMS	N	$832.39	$1,529.62	$1,521.36
389	FULL TERM NEONATE W MAJOR PROBLEMS	N	$757.89	$1,392.71	$1,385.18
390	NEONATE W OTHER SIGNIFICANT PROBLEMS	N	$757.89	$1,392.71	$1,385.18
391	NORMAL NEWBORN	N	$281.95	$518.13	$515.32
392	SPLENECTOMY AGE >17	S	$878.46	$1,896.45	$4,507.27
393	SPLENECTOMY AGE 0-17	S	$878.46	$1,896.45	$4,507.27
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	S	$1,207.65	$2,043.05	$3,689.19
395	RED BLOOD CELL DISORDERS AGE >17	N	$1,020.80	$1,838.30	$2,224.49
396	RED BLOOD CELL DISORDERS AGE 0-17	N	$1,179.39	$2,123.91	$2,570.09
397	COAGULATION DISORDERS	N	$1,109.56	$2,051.16	$3,493.22
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	N	$1,089.10	$2,044.45	$2,798.19
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	N	$1,094.51	$1,833.59	$2,249.43
400	NO LONGER VALID	S	$0.00	$0.00	$0.00
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	S	$1,182.89	$2,201.61	$3,421.01
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	S	$1,012.98	$2,148.72	$3,914.55
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	N	$1,238.86	$2,214.04	$3,069.76
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	N	$1,172.41	$1,944.67	$2,685.54
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	N	$1,173.30	$2,333.83	$3,836.22
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	S	$1,366.27	$2,734.50	$4,789.63
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	S	$1,003.21	$2,327.72	$4,481.08
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	S	$1,554.48	$3,227.91	$5,148.16
409	RADIOTHERAPY	N	$1,323.20	$2,170.18	$2,433.12
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	N	$1,203.52	$1,978.00	$3,838.56
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	N	$1,003.56	$1,003.56	$2,568.36
412	HISTORY OF MALIGNANCY W ENDOSCOPY	N	$931.14	$931.14	$2,184.34
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	N	$1,102.94	$2,185.16	$2,255.56
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	N	$989.76	$1,856.93	$1,647.43
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	S	$1,234.10	$2,314.58	$3,405.63
416	SEPTICEMIA AGE >17	N	$1,081.32	$2,032.86	$2,310.97
417	SEPTICEMIA AGE 0-17	N	$1,228.39	$2,309.35	$2,625.28
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	N	$1,037.84	$1,959.95	$1,837.02
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	N	$1,070.25	$1,772.76	$2,196.12
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	N	$971.11	$1,768.67	$1,860.05
421	VIRAL ILLNESS AGE >17	N	$1,012.02	$1,761.87	$2,056.37
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	N	$978.03	$1,660.11	$1,988.81
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	N	$1,006.20	$2,056.84	$2,611.40
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	S	$1,085.95	$1,556.00	$1,310.90
425	ACUTE ADJUSTMENT REACTION & PSYCHOSOCIAL DYSFUNCTION	N	$1,095.07	$1,793.63	$1,277.38
426	DEPRESSIVE NEUROSES	N	$1,073.05	$1,265.66	$433.65
427	NEUROSES EXCEPT DEPRESSIVE	N	$926.09	$1,236.92	$353.04
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	N	$1,071.16	$1,674.11	$343.90
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	N	$1,284.72	$1,757.55	$682.38
430	PSYCHOSES	N	$1,101.06	$1,320.52	$359.12
431	CHILDHOOD MENTAL DISORDERS	N	$953.72	$1,261.80	$302.71
432	OTHER MENTAL DISORDER DIAGNOSES	N	$925.48	$1,272.18	$378.15

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	N	$1,241.35	$2,174.55	$591.01
434	NO LONGER VALID	S	$0.00	$0.00	$0.00
435	NO LONGER VALID	S	$0.00	$0.00	$0.00
436	NO LONGER VALID	S	$0.00	$0.00	$0.00
437	NO LONGER VALID	S	$0.00	$0.00	$0.00
438	NO LONGER VALID	S	$0.00	$0.00	$0.00
439	SKIN GRAFTS FOR INJURIES	S	$963.14	$1,948.70	$2,726.48
440	WOUND DEBRIDEMENTS FOR INJURIES	S	$1,040.83	$2,043.44	$2,666.29
441	HAND PROCEDURES FOR INJURIES	S	$883.21	$2,050.31	$4,175.06
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	S	$1,013.26	$2,085.23	$3,800.75
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	S	$1,018.47	$2,148.15	$4,292.22
444	TRAUMATIC INJURY AGE >17 W CC	N	$891.44	$1,875.51	$1,516.13
445	TRAUMATIC INJURY AGE >17 W/O CC	N	$1,059.05	$2,232.53	$1,586.81
446	TRAUMATIC INJURY AGE 0-17	N	$940.41	$1,994.25	$1,547.11
447	ALLERGIC REACTIONS AGE >17	N	$1,020.50	$2,009.29	$2,024.12
448	ALLERGIC REACTIONS AGE 0-17	N	$1,020.50	$2,009.29	$2,024.12
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	N	$1,156.54	$2,220.14	$2,530.41
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	N	$1,026.86	$1,838.01	$1,904.31
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	N	$709.15	$1,351.26	$1,526.09
452	COMPLICATIONS OF TREATMENT W CC	N	$989.64	$1,907.83	$2,310.39
453	COMPLICATIONS OF TREATMENT W/O CC	N	$1,006.63	$1,971.56	$1,959.96
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	N	$1,742.78	$3,435.16	$3,359.50
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	N	$1,111.37	$1,865.92	$1,897.25
456	NO LONGER VALID	S	$0.00	$0.00	$0.00
457	NO LONGER VALID	S	$0.00	$0.00	$0.00
458	NO LONGER VALID	S	$0.00	$0.00	$0.00
459	NO LONGER VALID	S	$0.00	$0.00	$0.00
460	NO LONGER VALID	S	$0.00	$0.00	$0.00
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	S	$1,171.90	$2,328.52	$2,763.55
462	REHABILITATION	N	$977.88	$1,193.34	$1,188.63
463	SIGNS & SYMPTOMS W CC	N	$897.19	$1,622.02	$1,455.69
464	SIGNS & SYMPTOMS W/O CC	N	$735.38	$1,291.14	$974.70
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	N	$1,022.47	$1,694.54	$1,171.53
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	N	$1,072.68	$2,038.00	$1,297.44
467	OTHER FACTORS INFLUENCING HEALTH STATUS	N	$769.45	$1,646.48	$923.21
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	S	$1,146.09	$2,158.07	$3,956.62
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	S	$346.95	$672.42	$954.45
470	UNGROUPABLE	S	$553.13	$1,072.01	$1,521.63
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	S	$927.18	$1,750.31	$7,766.82
472	NO LONGER VALID	S	$0.00	$0.00	$0.00
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	N	$1,173.30	$2,333.83	$3,836.22
474	NO LONGER VALID	S	$0.00	$0.00	$0.00
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	N	$1,130.35	$2,170.50	$3,679.85
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	S	$1,257.12	$2,120.68	$2,517.52
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	S	$1,187.42	$2,089.12	$2,986.95
478	OTHER VASCULAR PROCEDURES W CC	S	$1,183.50	$2,131.45	$4,653.87
479	OTHER VASCULAR PROCEDURES W/O CC	S	$1,051.42	$1,887.57	$6,778.56
480	LIVER TRANSPLANT	S	$1,425.65	$2,850.63	$10,628.81
481	BONE MARROW TRANSPLANT	S	$1,828.81	$2,436.82	$4,641.83
482	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	S	$1,134.93	$2,288.51	$3,722.07
483	TRAC W MECH VENT 96+HRS OR PDX EXCEPT FACE,MOUTH & NECK DX OSES	S	$1,677.61	$2,602.44	$5,399.11
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	S	$1,218.49	$2,823.89	$6,037.16
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRA	S	$1,098.06	$2,532.34	$4,834.12
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	S	$1,119.32	$2,621.73	$5,843.85
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	N	$966.54	$2,479.21	$2,731.69
488	HIV W EXTENSIVE O.R. PROCEDURE	S	$1,766.56	$3,077.84	$4,541.28
489	HIV W MAJOR RELATED CONDITION	N	$1,365.99	$2,476.50	$2,617.61
490	HIV W OR W/O OTHER RELATED CONDITION	N	$1,036.56	$1,791.08	$1,824.31
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	S	$995.05	$2,052.65	$8,012.03
492	CHEMOTHERAPY W ACUTE LEUKEMIA OR W USE OF HI DOSE CHEMOAGENT	N	$1,114.91	$1,948.04	$3,666.76
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	S	$1,017.53	$1,943.26	$4,450.30
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	S	$967.56	$1,669.94	$5,760.14
495	LUNG TRANSPLANT	S	$1,681.28	$3,171.05	$13,421.22
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	S	$1,175.68	$2,496.51	$9,777.98
497	SPINAL FUSION EXCEPT CERVICAL W CC	S	$1,002.60	$2,231.37	$8,847.40
498	SPINAL FUSION EXCEPT CERVICAL W/O CC	S	$941.25	$2,003.02	$10,189.93
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	S	$1,067.53	$2,269.61	$4,794.93
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	S	$972.77	$2,166.79	$6,101.49
501	KNEE PROCEDURES W PDX OF INFECTION W CC	S	$1,159.77	$2,225.62	$3,553.48
502	KNEE PROCEDURES W PDX OF INFECTION W/O CC	S	$1,020.96	$1,467.93	$3,154.44
503	KNEE PROCEDURES W/O PDX OF INFECTION	S	$1,181.16	$2,380.59	$5,377.48
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	S	$2,926.52	$4,017.20	$8,162.33

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

PAGE 8 OF 8

DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	N	$747.96	$2,371.68	$4,473.93
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA	S	$1,741.96	$4,349.11	$4,310.81
507	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA	S	$1,865.85	$3,706.52	$2,881.55
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA	N	$1,011.86	$3,150.79	$1,780.25
509	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA	N	$975.01	$2,921.89	$1,389.13
510	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	N	$1,037.56	$3,561.94	$2,170.14
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	N	$752.60	$2,820.57	$1,156.65
512	SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	S	$1,277.12	$3,124.84	$14,895.66
513	PANCREAS TRANSPLANT	S	$1,556.78	$3,940.74	$12,965.65
514	NO LONGER VALID	S	$0.00	$0.00	$0.00
515	CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH	S	$1,076.76	$1,870.32	$16,335.19
516	PERCUTANEOUS CARDIOVASC PROC W AMI	S	$1,231.66	$2,103.39	$9,131.74
517	PERC CARDIO PROC W NON-DRUG ELUTING STENT W/O AMI	S	$1,158.16	$1,969.24	$14,074.08
518	PERC CARDIO PROC W/O CORONARY ARTERY STENT OR AMI	S	$1,376.34	$2,161.68	$9,303.01
519	CERVICAL SPINAL FUSION W CC	S	$1,119.11	$2,448.17	$7,749.91
520	CERVICAL SPINAL FUSION W/O CC	S	$914.69	$2,159.92	$11,871.32
521	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	N	$1,018.96	$1,873.44	$973.14
522	ALC/DRUG ABUSE OR DEPEND W REHABILITATION THERAPY W/O CC	N	$875.05	$1,391.18	$239.01
523	ALC/DRUG ABUSE OR DEPEND W/O REHABILITATION THERAPY W/O CC	N	$903.71	$1,247.20	$314.80
524	TRANSIENT ISCHEMIA	N	$1,000.10	$1,737.91	$2,274.68
525	HEART ASSIST SYSTEM IMPLANT	S	$1,498.88	$2,689.55	$11,513.30
526	PERCUTNEOUS CARDIOVASULAR PROC W DRUG ELUTING STENT W AMI	S	$1,376.34	$2,161.68	$9,303.01
527	PERCUTNEOUS CARDIOVASULAR PROC W DRUG ELUTING STENT W/O AMI	S	$1,376.34	$2,161.68	$9,303.01
528	INTRACRANIAL VASCULAR PROC W PDX HEMORRHAGE	S	$1,277.15	$2,973.10	$6,470.61
529	VENTRICULAR SHUNT PROCEDURES W CC	S	$1,257.83	$2,790.78	$4,302.46
530	VENTRICULAR SHUNT PROCEDURES W/O CC	S	$1,236.11	$2,619.39	$5,130.90
531	SPINAL PROCEDURES W CC	S	$1,112.25	$2,413.00	$4,585.99
532	SPINAL PROCEDURES W/O CC	S	$1,075.84	$2,287.28	$5,664.53
533	EXTRACRANIAL PROCEDURES W CC	S	$1,001.15	$1,918.94	$5,426.61
534	EXTRACRANIAL PROCEDURES W/O CC	S	$948.56	$1,911.76	$7,538.38
535	CARDIAC DEFIB IMPLANT W CARDIAC CATH W AMI/HF/SHOCK	S	$1,361.86	$2,302.70	$11,814.77
536	CARDIAC DEFIB IMPLANT W CARDIAC CATH W/O AMI/HF/SHOCK	S	$1,244.71	$2,017.75	$17,976.36
537	LOCAL EXCIS & REMOV OF INT FIX DEV EXCEPT HIP & FEMUR W CC	S	$1,190.77	$2,289.96	$3,940.63
538	LOCAL EXCIS & REMOV OF INT FIX DEV EXCEPT HIP & FEMUR W/O CC	S	$1,072.13	$2,428.30	$5,534.90
539	LYMPHOMA & LEUKEMIA W MAJOR OR PROCEDURE W CC	S	$1,143.54	$2,313.73	$4,238.87
540	LYMPHOMA & LEUKEMIA W MAJOR OR PROCEDURE W/O CC	S	$1,069.17	$2,144.61	$4,812.12

Changes to TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

PAGE 1 OF 1

Change Action	CPT/ HCPCS Code	Modifier	CPT/HCPCS Code Description	Conversion Factor/GAAF Category	Status/ Usage Indicator	Work Expense RVUs	Facility Practice Expense RVUs	Non-Facility Practice Expense RVUs	Total Expense RVUs	Charge Method-ology
Deleted	51798	26								
Deleted	51798	TC								
Added	51798		Us urine capacity measure	Surgery	a				0.48	SA
Deleted	92961	26								
Deleted	92961	TC								
Added	92961		Cardioversion, electric, int	Cardiovascular	a				6.37	SA
Deleted	93613	26								
Deleted	93613	TC								
Added	93613		Electrophys map 3d, add-on	Cardiovascular	a				9.72	SA
Deleted	93720	26								
Deleted	93720	TC								
Added	93720		Total body plethysmography	Cardiovascular		0.17	0.76	0.76		
Deleted	99185	26								
Deleted	99185	TC								
Added	99185		Regional hypothermia	Miscellaneous Medical	a				0.64	SA
Deleted	99186	26								
Deleted	99186	TC								
Added	99186		Total body hypothermia	Miscellaneous Medical	a				1.77	SA

Key to Status/Usage Indicators:

a Cannot be billed by VA Hospital Outpatients and Provider-Based Clinics (because the service is separately priced as outpatient facility charges — see Table F).

b Cannot be billed by VA Hospital Outpatients and Provider-Based Clinics (because a different code is used for facility billing).

No entry: Can be billed at all VA locations.

Charge Methodology:

Misc: RVUs obtained using the methodology for unlisted procedures.

No entry: RVUs obtained from the Medicare Physician Fee Schedule.

All other entries: See Supplementary Table 1, Reasonable Charges Data Sources - V2.0.

NOTE: CPT Codes and descriptions only copyright 2002 American Medical Association. All rights reserved. Applicable FARS/DFARS apply.

Changes to TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

PAGE 1 OF 3

Change Action	HCPCS Code	Modifier	HCPCS Code Description	Status/ Usage Indicator	Charge	GAAF Cateogory
Deleted	A4253	NU				
Deleted	A4254					
Deleted	A4421					
Deleted	A4611					
Deleted	A4612					
Deleted	A4618					
Deleted	A4624	NU				
Deleted	A4628	NU				
Deleted	A4630	NU				
Deleted	A4631					
Deleted	A4635					
Deleted	A4636					
Deleted	A4637					
Deleted	A4640					
Deleted	A4649					
Deleted	A4913					
Deleted	A7000	NU				
Deleted	A7001	NU				
Deleted	A7002	NU				
Deleted	A7003	NU				
Deleted	A7004	NU				
Deleted	A7005	NU				
Deleted	A7006	NU				
Deleted	A7007	NU				
Deleted	A7008	NU				
Deleted	A7009	NU				
Deleted	A7010	NU				
Deleted	A7012	NU				
Deleted	A7013	NU				
Deleted	A7014	NU				
Deleted	A7015	NU				
Deleted	A7016	NU				
Deleted	A9150					
Deleted	A9270					
Deleted	A9300					
Added	B9002	UE	Enteral infusion pump w/ ala		$1,732.13	Non-Drug
Deleted	B9998					
Deleted	B9999					
Deleted	E0159					
Deleted	E0188					
Deleted	E0218					
Deleted	E0273					
Deleted	E0274					
Deleted	E0555					
Deleted	E0602					
Deleted	E0607					
Deleted	E0749					
Added	E0749	NU	Elec osteogen stim implanted		$5,661.76	Non-Drug
Deleted	E0780	NU				
Added	E0780		Mech amb infusion pump <8hrs		$18.35	Non-Drug
Deleted	E0782					
Deleted	E0784					
Added	E0784	NU	Ext amb infusn pump insulin		$5,014.13	Non-Drug
Deleted	E0950					
Deleted	E0953					
Deleted	E0954					
Deleted	E0959					
Deleted	E0961					
Deleted	E0966					
Deleted	E0970					
Deleted	E0972					
Deleted	E0973					
Deleted	E0974					
Deleted	E0975					
Deleted	E0976					
Deleted	E0978					
Deleted	E0979					
Deleted	E0990					
Deleted	E0991					
Deleted	E0992					
Deleted	E0993					

See end of table for note regarding Status/Usage Indicators.

Changes to TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

PAGE 2 OF 3

Change Action	HCPCS Code	Modifier	HCPCS Code Description	Status/ Usage Indicator	Charge	GAAF Cateogory
Deleted	E0995					
Deleted	E0996					
Deleted	E1000					
Deleted	E1066					
Deleted	E1069					
Deleted	E1085					
Deleted	E1086					
Deleted	E1089					
Deleted	E1090					
Deleted	E1130					
Deleted	E1140					
Deleted	E1212					
Deleted	E1213					
Deleted	E1226					
Deleted	E1250					
Deleted	E1260					
Deleted	E1285					
Deleted	E1290					
Deleted	E1300	NU				
Deleted	E1353					
Deleted	E1510					
Added	E1510	NU	Kidney dialysate delivry sys		$1,403.10	Non-Drug
Deleted	J3490					
Deleted	J3590					
Deleted	J7599					
Deleted	J7699					
Deleted	J7799					
Deleted	J8499					
Deleted	J8999					
Deleted	J9999					
Deleted	K0012					
Added	K0012	NU	Ltwt portbl power whlchr		$3,760.35	Non-Drug
Deleted	K0030					
Deleted	K0082					
Deleted	K0083					
Deleted	K0084					
Deleted	K0085					
Deleted	K0086					
Deleted	K0087					
Deleted	K0088					
Deleted	K0195					
Added	K0195	NU	Elevating whlchair leg rests		$143.35	Non-Drug
Deleted	K0415					
Deleted	K0416					
Deleted	L0999					
Deleted	L2999					
Deleted	L3649					
Deleted	L3964					
Deleted	L3965					
Deleted	L3966					
Deleted	L3968					
Deleted	L3969					
Deleted	L3970					
Deleted	L3972					
Deleted	L3974					
Deleted	L5999					
Deleted	L8040					
Deleted	L8041					
Deleted	L8042					
Deleted	L8043					
Deleted	L8044					
Deleted	L8045					
Deleted	L8046					
Deleted	L8047					
Deleted	L8239					
Deleted	L8499					
Deleted	L8699					
Deleted	Q4050					
Deleted	S5199					
Deleted	V2799					

See end of table for note regarding Status/Usage Indicators.

Changes to TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

PAGE 3 OF 3

Change Action	HCPCS Code	Modifier	HCPCS Code Description	Status/ Usage Indicator	Charge	GAAF Cateogory

Key to Status/Usage Indicators:

a Cannot be billed by VA Hospital Outpatients and Provider-Based Clinics (because the service is separately priced as outpatient facility charges — see Table F).

No entry: Can be billed at all VA locations.

V2p0 FR Data Sources.xls - By Charge Type

Changes to Supplementary Table 1
Reasonable Charges Data Sources - V2.0

Page 1 of 1

Charge Type	Paragraph	Subject	Data Source	Edition
Inpt	(b)(2)	per diem charges	CPI-U, inpatient hospital services component, seasonally adjusted	Sept 2003, as of Oct 2003
Inpt	(b)(2)	per diem charges	MedPAR file	FY 2002
Inpt	(b)(2)(i)	charge component percentages: R&B, ancillary	MedPAR file	FY 2002
Inpt	(b)(2)(ii)	charge ratios: standard R&B, ICU R&B	MedPAR file	FY 2002
Inpt	(b)(2)(iii)	80th percentile	MedPAR file	FY 2002
Inpt	(b)(2)(iv)	trending forward	CPI-U, inpatient hospital services component, seasonally adjusted	Sept 2003, as of Oct 2003

Charge Type Abbreviations

Inpt = Acute inpatient facility charges

Other Abbreviations

CPI-U = Consumer Price Index - All Urban Consumers
FY = Fiscal Year (October - September)
ICU = Intensive Care Unit
MedPAR = Medicare Provider Analysis and Review
R&B = Room and Board

Supplementary Table 3
VA Medical Facility Locations, Three-Digit ZIP Codes,
and Provider-Based/Non-Provider-Based Designations
As of December 5, 2003

RC V2p0 Facility List 2003-12-05 FR.xls

Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
402	TOGUS, ME	ME	043	1	VAMC	PBH
402GA	CARIBOU, ME	ME	047	1	CBOC	NPB
402GB	CALAIS, ME	ME	046	1	CBOC	NPB
402GC	RUMFORD, ME	ME	042	1	CBOC	NPB
402GD	SACO, ME	ME	040	1	CBOC	NPB
402HB	BANGOR, ME	ME	044	1	CBOC	NPB
402HC	PORTLAND, ME	ME	041	1	CBOC	NPB
405	WHITE RIVER JCT, VT	VT	050	1	VAMC	PBH
405GA	BENNINGTON, VT	VT	052	1	CBOC	NPB
405HA	BURLINGTON, VT	VT	054	1	CBOC	NPB
405HC	SAINT JOHNSBURY, VT	VT	058	1	CBOC	NPB
405HD	NEWPORT, VT	VT	058	1	CBOC	NPB
405HF	RUTLAND, VT	VT	057	1	CBOC	NPB
405HG	WILDER, VT	VT	050	1	CBOC	NPB
436	FORT HARRISON, MT	MT	596	19	VAMC	PBH
436GA	ANACONDA, MT	MT	597	19	CBOC	NPB
436GB	GREAT FALLS, MT	MT	594	19	CBOC	NPB
436GC	MISSOULA, MT	MT	598	19	CBOC	NPB
436GD	BOZEMAN, MT	MT	597	19	CBOC	NPB
436GF	KALISPELL, MT	MT	599	19	CBOC	NPB
436GH	BILLINGS, MT	MT	591	19	CBOC	NPB
436GI	GLASGOW, MT	MT	592	19	CBOC	NPB
436GJ	MILES CITY, MT	MT	593	19	CBOC	NPB
436GK	SIDNEY, MT	MT	592	19	CBOC	NPB
437	FARGO, ND	ND	581	23	VAMC	PBH
437GA	GRAFTON, ND	ND	582	23	CBOC	NPB
437GB	BISMARCK, ND	ND	585	23	CBOC	NPB
437GC	FERGUS FALLS, MN	MN	565	23	CBOC	NPB
437GD	MINOT, ND	ND	587	23	CBOC	NPB
438	SIOUX FALLS, SD	SD	571	23	VAMC	PBH
438GC	SIOUX CITY, IA	IA	511	23	CBOC	NPB
438GD	ABERDEEN, SD	SD	574	23	CBOC	NPB
442	CHEYENNE, WY	WY	820	19	VAMC	PBH
442GB	SIDNEY, NE	NE	691	19	CBOC	NPB
442GC	FORT COLLINS, CO	CO	805	19	CBOC	NPB
442GD	GREELEY, CO	CO	806	19	CBOC	NPB
459	HONOLULU, HI	HI	968	21	VAMC	PBH
459GA	KAHULUI, HI	HI	967	21	CBOC	NPB
459GB	HILO, HI	HI	967	21	CBOC	NPB
459GC	KAILUA KONA, HI	HI	967	21	CBOC	NPB
459GD	LIHUE, HI	HI	967	21	CBOC	NPB
459GE	GUAM, GU	GU	969	21	CBOC	NPB
460	WILMINGTON, DE	DE	198	4	VAMC	PBH
460GA	MILLSBORO, DE	DE	199	4	CBOC	NPB
460HE	VENTNOR CITY, NJ	NJ	084	4	CBOC	NPB
460HG	VINELAND, NJ	NJ	083	4	CBOC	NPB
463	ANCHORAGE, AK	AK	995	20	IOC	PBO
463GA	FAIRBANKS, AK	AK	997	20	CBOC	NPB
463GB	KENAI, AK	AK	996	20	CBOC	NPB
501	ALBUQUERQUE, NM	NM	871	18	VAMC	PBH
501G2	LAS VEGAS, NM	NM	875	18	CBOC	PBO
501GA	ARTESIA, NM	NM	882	18	CBOC	NPB
501GB	FARMINGTON, NM	NM	874	18	CBOC	NPB

Supplementary Table 3
VA Medical Facility Locations, Three-Digit ZIP Codes, and Provider-Based/Non-Provider-Based Designations
As of December 5, 2003

RC V2p0 Facility List 2003-12-05 FR.xls

Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
501GC	SILVER CITY, NM	NM	880	18	CBOC	NPB
501GD	GALLUP, NM	NM	873	18	CBOC	NPB
501GE	ESPANOLA, NM	NM	884	18	CBOC	NPB
501GH	TRUTH OR CONSEQUENCES, NM	NM	879	18	CBOC	NPB
501GI	ALAMOGORDO, NM	NM	883	18	CBOC	NPB
501GJ	DURANGO, CO	CO	813	18	CBOC	NPB
501GK	SANTA FE, NM	NM	875	18	CBOC	NPB
501HB	RATON, NM	NM	877	18	CBOC	NPB
502	ALEXANDRIA, LA	LA	713	16	VAMC	PBH
502GA	JENNINGS, LA	LA	705	16	CBOC	NPB
502GB	LAFAYETTE, LA	LA	705	16	CBOC	NPB
503	ALTOONA, PA	PA	166	4	VAMC	PBH
503GA	JOHNSTOWN, PA	PA	159	4	CBOC	NPB
503GB	DU BOIS, PA	PA	158	4	CBOC	NPB
503GC	STATE COLLEGE, PA	PA	168	4	CBOC	NPB
504	AMARILLO, TX	TX	791	18	VAMC	PBH
504BY	LUBBOCK, TX	TX	794	18	CBOC	NPB
504BZ	CLOVIS, NM	NM	881	18	CBOC	NPB
504GA	CHILDRESS, TX	TX	792	18	CBOC	NPB
504GB	LIBERAL, KS	KS	679	18	CBOC	NPB
504HB	STRATFORD, TX	TX	790	18	CBOC	NPB
506	ANN ARBOR, MI	MI	481	11	VAMC	PBH
506GA	TOLEDO, OH	OH	436	11	CBOC	NPB
506GB	FLINT, MI	MI	485	11	CBOC	NPB
506GC	JACKSON, MI	MI	492	11	CBOC	NPB
508	ATLANTA/DECATUR, GA	GA	300	7	VAMC	PBH
508GA	ATLANTA/MIDTOWN, GA	GA	303	7	CBOC	PBO
508GE	OAKWOOD/NE CORRIDOR, GA	GA	305	7	CBOC	PBO
508GF	SMYRNA, GA	GA	300	7	CBOC	NPB
508GH	LAWRENCEVILLE, GA	GA	300	7	CBOC	NPB
509	AUGUSTA DOWNTOWN, GA	GA	309	7	VAMC	PBH
509A0	AUGUSTA UPTOWN, GA	GA	309	7	VAMC	PBH
512	BALTIMORE, MD	MD	212	5	VAMC	PBH
512A5	PERRY POINT, MD	MD	219	5	VAMC	PBH
512GA	CAMBRIDGE, MD	MD	216	5	CBOC	NPB
512GC	GLEN BURNIE, MD	MD	210	5	CBOC	NPB
512GD	BALTIMORE/LOCH RAVEN, MD	MD	212	5	CBOC	PBO
512GE	POCOMOKE CITY, MD	MD	218	5	CBOC	NPB
512GF	FORT HOWARD CBOC, MD	MD	210	5	CBOC	PBO
515	BATTLE CREEK, MI	MI	490	11	VAMC	PBH
515BY	GRAND RAPIDS, MI	MI	495	11	CBOC	NPB
515GA	MUSKEGON, MI	MI	494	11	CBOC	NPB
515GB	LANSING, MI	MI	489	11	CBOC	NPB
515GC	BENTON HARBOR, MI	MI	490	11	CBOC	NPB
516	BAY PINES, FL	FL	337	8	VAMC	PBH
516BZ	FORT MYERS, FL	FL	339	8	CBOC	NPB
516GA	SARASOTA, FL	FL	342	8	CBOC	NPB
516GB	SAINT PETERSBURG, FL	FL	337	8	CBOC	NPB
516GC	CLEARWATER, FL	FL	346	8	CBOC	NPB
516GD	ELLENTON, FL	FL	342	8	CBOC	NPB
516GE	PORT CHARLOTTE, FL	FL	339	8	CBOC	NPB
516GF	NAPLES, FL	FL	341	8	CBOC	NPB
516GH	AVON PARK, FL	FL	338	8	CBOC	NPB

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
517	BECKLEY, WV	WV	258	6	VAMC	PBH
517GA	GASSAWAY, WV	WV	266	6	CBOC	NPB
518	BEDFORD, MA	MA	017	1	VAMC	PBH
518GA	LYNN, MA	MA	019	1	CBOC	NPB
518GB	HAVERHILL, MA	MA	018	1	CBOC	NPB
518GC	WINCHINDON, MA	MA	014	1	CBOC	NPB
518GD	LOWELL, MA	MA	018	1	CBOC	NPB
518GE	GLOUCESTER, MA	MA	019	1	CBOC	NPB
518GG	FITCHBURG, MA	MA	014	1	CBOC	NPB
519	BIG SPRING, TX	TX	797	18	VAMC	PBH
519GA	ODESSA, TX	TX	797	18	CBOC	NPB
519GB	HOBBS, NM	NM	882	18	CBOC	NPB
519GD	FORT STOCKTON, TX	TX	797	18	CBOC	NPB
519HC	ABILENE, TX	TX	796	18	CBOC	NPB
519HD	STAMFORD, TX	TX	795	18	CBOC	NPB
519HF	SAN ANGELO, TX	TX	769	18	CBOC	NPB
520	BILOXI, MS	MS	395	16	VAMC	PBH
520A0	GULFPORT, MS	MS	395	16	VAMC	PBH
520BZ	PENSACOLA, FL	FL	325	16	CBOC	NPB
520GA	MOBILE, AL	AL	366	16	CBOC	NPB
520GB	PANAMA CITY, FL	FL	324	16	CBOC	NPB
521	BIRMINGHAM, AL	AL	352	7	VAMC	PBH
521GA	HUNTSVILLE, AL	AL	358	7	CBOC	NPB
521GB	DECATUR, AL	AL	356	7	CBOC	NPB
521GC	FLORENCE, AL	AL	356	7	CBOC	NPB
521GD	RAINBOW CITY, AL	AL	359	7	CBOC	NPB
521GE	ANNISTON, AL	AL	362	7	CBOC	NPB
521GF	JASPER, AL	AL	355	7	CBOC	NPB
523	BOSTON, MA	MA	021	1	VAMC	PBH
523A4	WEST ROXBURY, MA	MA	021	1	VAMC	PBH
523A5	BROCKTON, MA	MA	024	1	VAMC	PBH
523BZ	BOSTON CBOC, MA	MA	021	1	CBOC	PBO
523GA	FRAMINGHAM, MA	MA	017	1	CBOC	NPB
523GB	WORCESTER, MA	MA	016	1	CBOC	NPB
523GC	QUINCY, MA	MA	021	1	CBOC	NPB
523GD	PLYMOUTH, MA	MA	023	1	CBOC	NPB
523GE	DORCHESTER, MA	MA	021	1	CBOC	NPB
526	BRONX, NY	NY	104	3	VAMC	PBH
526GA	WHITE PLAINS/BRONX, NY	NY	106	3	CBOC	PBO
526GB	YONKERS, NY	NY	107	3	CBOC	PBO
526GC	SOUTH BRONX, NY	NY	104	3	CBOC	PBO
526GD	QUEENS, NY	NY	111	3	CBOC	PBO
528	BUFFALO, NY	NY	142	2	VAMC	PBH
528A4	BATAVIA, NY	NY	140	2	VAMC	PBH
528A5	CANANDAIGUA, NY	NY	144	2	VAMC	PBH
528A6	BATH, NY	NY	148	2	VAMC	PBH
528A7	SYRACUSE, NY	NY	132	2	VAMC	PBH
528A8	ALBANY, NY	NY	122	2	VAMC	PBH
528G1	MALONE, NY	NY	129	2	CBOC	NPB
528G2	ELIZABETHTOWN, NY	NY	129	2	CBOC	NPB
528G3	BAINBRIDGE, NY	NY	137	2	CBOC	NPB
528G4	ELMIRA, NY	NY	149	2	CBOC	NPB
528G5	AUBURN, NY	NY	130	2	CBOC	NPB

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
528G6	FONDA, NY	NY	120	2	CBOC	NPB
528G7	CATSKILL, NY	NY	124	2	CBOC	NPB
528G8	WELLSVILLE, NY	NY	148	2	CBOC	NPB
528G9	CORTLAND, NY	NY	130	2	CBOC	NPB
528GB	JAMESTOWN, NY	NY	147	2	CBOC	NPB
528GC	DUNKIRK, NY	NY	140	2	CBOC	NPB
528GD	NIAGARA FALLS, NY	NY	143	2	CBOC	NPB
528GE	ROCHESTER, NY	NY	146	2	CBOC	PBO
528GK	LOCKPORT, NY	NY	140	2	CBOC	NPB
528GL	MASSENA, NY	NY	136	2	CBOC	NPB
528GM	ROME, NY	NY	134	2	CBOC	NPB
528GN	BINGHAMTON, NY	NY	139	2	CBOC	NPB
528GO	WATERTOWN/FORT DRUM, NY	NY	136	2	CBOC	NPB
528GP	OSWEGO, NY	NY	131	2	CBOC	NPB
528GQ	LACKAWANNA, NY	NY	142	2	CBOC	NPB
528GR	OLEAN, NY	NY	147	2	CBOC	NPB
528GT	GLENS FALLS, NY	NY	128	2	CBOC	NPB
528GV	PLATTSBURGH, NY	NY	129	2	CBOC	NPB
528GW	SCHENECTADY, NY	NY	123	2	CBOC	NPB
528GX	TROY, NY	NY	121	2	CBOC	PBO
528GY	CLIFTON PARK, NY	NY	120	2	CBOC	NPB
528GZ	KINGSTON, NY	NY	124	2	CBOC	NPB
529	BUTLER, PA	PA	160	4	VAMC	PBH
529GA	MERCER, PA	PA	161	4	CBOC	NPB
529GB	NEW CASTLE, PA	PA	161	4	CBOC	NPB
529GC	KITTANNING, PA	PA	162	4	CBOC	NPB
529GD	KNOX, PA	PA	162	4	CBOC	NPB
531	BOISE, ID	ID	837	20	VAMC	PBH
531GD	ONTARIO, OR	OR	979	20	CBOC	NPB
531GE	TWIN FALLS, ID	ID	833	20	CBOC	NPB
534	CHARLESTON, SC	SC	294	7	VAMC	PBH
534BY	SAVANNAH, GA	GA	314	7	CBOC	NPB
534GB	MYRTLE BEACH, SC	SC	295	7	CBOC	NPB
534GC	BEAUFORT, SC	SC	299	7	CBOC	NPB
537	CHICAGO WEST SIDE, IL	IL	606	12	VAMC	PBH
537A4	CHICAGO LAKESIDE, IL	IL	606	12	VAMC	PBH
537BY	CROWN POINT, IN	IN	463	12	CBOC	NPB
537GA	CHICAGO HEIGHTS, IL	IL	604	12	CBOC	PBO
537HA	CHICAGO/WOODLAWN, IL	IL	606	12	CBOC	PBO
538	CHILLICOTHE, OH	OH	456	10	VAMC	PBH
538GA	ATHENS, OH	OH	457	10	CBOC	NPB
538GB	PORTSMOUTH, OH	OH	456	10	CBOC	NPB
538GC	MARIETTA, OH	OH	457	10	CBOC	NPB
538GD	LANCASTER, OH	OH	431	10	CBOC	NPB
539	CINCINNATI, OH	OH	452	10	VAMC	PBH
539GA	BELLEVUE, KY	KY	410	10	CBOC	NPB
539GB	CINCINNATI CBOC, OH	OH	452	10	CBOC	PBO
539GC	LAWRENCEBURG, IN	IN	470	10	CBOC	NPB
540	CLARKSBURG, WV	WV	263	4	VAMC	PBH
540GA	PARSONS, WV	WV	262	4	CBOC	NPB
540GB	PARKERSBURG, WV	WV	261	4	CBOC	NPB
540GC	GASSAWAY, WV	WV	266	4	CBOC	NPB
541	CLEVELAND WADE PARK, OH	OH	441	10	VAMC	PBH

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
541A0	CLEVELAND BRECKSVILLE, OH	OH	441	10	VAMC	PBH
541BY	CANTON, OH	OH	447	10	CBOC	NPB
541BZ	YOUNGSTOWN, OH	OH	445	10	CBOC	NPB
541GB	LORAIN, OH	OH	440	10	CBOC	NPB
541GC	SANDUSKY, OH	OH	448	10	CBOC	NPB
541GD	MANSFIELD, OH	OH	449	10	CBOC	NPB
541GE	CLEVELAND CBOC, OH	OH	441	10	CBOC	PBO
541GF	PAINESVILLE, OH	OH	440	10	CBOC	NPB
541GG	AKRON, OH	OH	443	10	CBOC	NPB
541GH	EAST LIVERPOOL, OH	OH	439	10	CBOC	NPB
541GI	WARREN, OH	OH	444	10	CBOC	NPB
542	COATESVILLE, PA	PA	193	4	VAMC	PBH
542GA	SPRINGFIELD, PA	PA	190	4	CBOC	NPB
542GB	PHILADELPHIA CBOC, PA	PA	191	4	CBOC	PBO
542GC	READING, PA	PA	196	4	CBOC	NPB
542GD	LANCASTER, PA	PA	176	4	CBOC	NPB
542GE	SPRING CITY, PA	PA	194	4	CBOC	NPB
542GF	VINELAND, NJ	NJ	083	4	CBOC	NPB
542GG	COATESVILLE MSCEC, PA	PA	193	4	CBOC	PBO
542GH	COATESVILLE CBOC, PA	PA	193	4	CBOC	PBO
542GI	VENTNOR CITY, NJ	NJ	084	4	CBOC	NPB
544	COLUMBIA, SC	SC	292	7	VAMC	PBH
544BZ	GREENVILLE, SC	SC	296	7	CBOC	NPB
544GB	FLORENCE, SC	SC	295	7	CBOC	NPB
544GC	ROCK HILL, SC	SC	297	7	CBOC	NPB
544GD	ANDERSON, SC	SC	296	7	CBOC	NPB
544GE	ORANGEBURG, SC	SC	291	7	CBOC	NPB
544GF	SUMTER, SC	SC	291	7	CBOC	NPB
546	MIAMI, FL	FL	331	8	VAMC	PBH
546BZ	OAKLAND PARK, FL	FL	333	8	CBOC	NPB
546GA	MIAMI CBOC, FL	FL	331	8	CBOC	PBO
546GB	KEY WEST, FL	FL	330	8	CBOC	NPB
546GC	HOMESTEAD, FL	FL	330	8	CBOC	NPB
546GD	PEMBROKE PINES, FL	FL	330	8	CBOC	NPB
546GE	KEY LARGO, FL	FL	330	8	CBOC	NPB
546GF	HALLANDALE, FL	FL	330	8	CBOC	NPB
546GG	CORAL SPRINGS, FL	FL	330	8	CBOC	NPB
546GH	DEERFIELD BEACH, FL	FL	334	8	CBOC	NPB
548	WEST PALM BEACH, FL	FL	334	8	VAMC	PBH
548GA	FORT PIERCE, FL	FL	349	8	CBOC	NPB
548GB	DELRAY BEACH, FL	FL	334	8	CBOC	NPB
548GC	STUART, FL	FL	349	8	CBOC	NPB
548GD	BOCA RATON, FL	FL	334	8	CBOC	NPB
548GE	VERO BEACH, FL	FL	329	8	CBOC	NPB
548GF	OKEECHOBEE, FL	FL	349	8	CBOC	NPB
549	DALLAS, TX	TX	752	17	VAMC	PBH
549A4	BONHAM, TX	TX	754	17	VAMC	PBH
549BY	FORT WORTH SOC, TX	TX	761	17	CBOC	PBO
549GA	TYLER, TX	TX	757	17	CBOC	NPB
549GC	BONHAM CBOC, TX	TX	754	17	CBOC	PBO
549GD	DENTON, TX	TX	762	17	CBOC	NPB
549GE	DECATUR, TX	TX	762	17	CBOC	NPB
549GF	EASTLAND, TX	TX	764	17	CBOC	NPB

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
549GH	GREENVILLE, TX	TX	754	17	CBOC	NPB
549GI	CLEBURNE, TX	TX	760	17	CBOC	NPB
550	DANVILLE, IL	IL	618	11	VAMC	PBH
550BY	PEORIA, IL	IL	616	11	CBOC	NPB
550GA	DECATUR, IL	IL	625	11	CBOC	NPB
550GC	LAFAYETTE, IN	IN	479	11	CBOC	NPB
550GD	SPRINGFIELD, IL	IL	627	11	CBOC	NPB
550GE	EFFINGHAM, IL	IL	624	11	CBOC	NPB
552	DAYTON, OH	OH	454	10	VAMC	PBH
552GA	MIDDLETOWN, OH	OH	450	10	CBOC	NPB
552GB	LIMA, OH	OH	458	10	CBOC	NPB
552GC	RICHMOND, IN	IN	473	10	CBOC	NPB
552GD	SPRINGFIELD, OH	OH	455	10	CBOC	NPB
553	DETROIT, MI	MI	482	11	VAMC	PBH
553GA	YALE, MI	MI	480	11	CBOC	NPB
553GB	PONTIAC, MI	MI	483	11	CBOC	NPB
554	DENVER, CO	CO	802	19	VAMC	PBH
554GB	AURORA, CO	CO	800	19	CBOC	NPB
554GC	LAKEWOOD, CO	CO	802	19	CBOC	NPB
554GD	PUEBLO, CO	CO	810	19	CBOC	NPB
554GE	COLORADO SPRINGS, CO	CO	809	19	CBOC	NPB
554GF	ALAMOSA, CO	CO	811	19	CBOC	NPB
554GG	LA JUNTA, CO	CO	810	19	CBOC	NPB
554GH	LAMAR, CO	CO	810	19	CBOC	NPB
554HB	FORT MORGAN, CO	CO	807	19	CBOC	NPB
556	NORTH CHICAGO, IL	IL	600	12	VAMC	PBH
556GA	EVANSTON, IL	IL	602	12	CBOC	NPB
556GC	MCHENRY, IL	IL	600	12	CBOC	NPB
556GD	KENOSHA, WI	WI	531	12	CBOC	NPB
557	DUBLIN, GA	GA	310	7	VAMC	PBH
557GA	MACON, GA	GA	312	7	CBOC	NPB
557GB	ALBANY, GA	GA	317	7	CBOC	NPB
558	DURHAM, NC	NC	277	6	VAMC	PBH
558GA	GREENVILLE, NC	NC	278	6	CBOC	NPB
558GB	RALEIGH, NC	NC	276	6	CBOC	NPB
561	EAST ORANGE, NJ	NJ	070	3	VAMC	PBH
561A4	LYONS, NJ	NJ	079	3	VAMC	PBH
561BY	NEWARK SAC, NJ	NJ	071	3	CBOC	NPB
561BZ	BRICK, NJ	NJ	087	3	CBOC	NPB
561GA	TRENTON, NJ	NJ	086	3	CBOC	NPB
561GB	ELIZABETH, NJ	NJ	072	3	CBOC	NPB
561GD	HACKENSACK, NJ	NJ	076	3	CBOC	NPB
561GE	JERSEY CITY, NJ	NJ	073	3	CBOC	NPB
561GF	NEW BRUNSWICK, NJ	NJ	089	3	CBOC	NPB
561GG	NEWARK CBOC, NJ	NJ	071	3	CBOC	NPB
561GH	MORRISTOWN, NJ	NJ	079	3	CBOC	NPB
561GI	FORT MONMOUTH, NJ	NJ	077	3	CBOC	NPB
561HB	JAMESBURG, NJ	NJ	088	3	CBOC	NPB
562	ERIE, PA	PA	165	4	VAMC	PBH
562GA	MEADVILLE, PA	PA	163	4	CBOC	NPB
562GB	ASHTABULA, OH	OH	440	4	CBOC	NPB
562GC	SMETHPORT, PA	PA	167	4	CBOC	NPB
564	FAYETTEVILLE, AR	AR	727	16	VAMC	PBH

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
564BY	MOUNT VERNON, MO	MO	657	16	CBOC	NPB
564GA	HARRISON, AR	AR	726	16	CBOC	NPB
564GB	FORT SMITH, AR	AR	729	16	CBOC	NPB
565	FAYETTEVILLE, NC	NC	283	6	VAMC	PBH
565GA	JACKSONVILLE UCJ, NC	NC	285	6	CBOC	NPB
565GC	WILMINGTON, NC	NC	284	6	CBOC	NPB
568	FORT MEADE, SD	SD	577	23	VAMC	PBH
568A4	HOT SPRINGS, SD	SD	577	23	VAMC	PBH
568GA	RAPID CITY, SD	SD	577	23	CBOC	NPB
568GB	PIERRE, SD	SD	575	23	CBOC	NPB
568HA	NEWCASTLE, WY	WY	827	23	CBOC	NPB
568HB	RUSHVILLE, NE	NE	693	23	CBOC	NPB
568HC	ALLIANCE, NE	NE	693	23	CBOC	NPB
568HH	GERING, NE	NE	693	23	CBOC	NPB
568HJ	ROSEBUD, SD	SD	575	23	CBOC	NPB
568HK	MCLAUGHLIN, SD	SD	576	23	CBOC	NPB
568HM	EAGLE BUTTE, SD	SD	576	23	CBOC	NPB
568HN	LAME DEER, MT	MT	590	23	CBOC	NPB
568HP	WINNER, SD	SD	575	23	CBOC	NPB
570	FRESNO, CA	CA	937	21	VAMC	PBH
570GA	ATWATER, CA	CA	953	21	CBOC	NPB
570GB	TULARE, CA	CA	932	21	CBOC	NPB
573	GAINESVILLE, FL	FL	326	8	VAMC	PBH
573A4	LAKE CITY, FL	FL	320	8	VAMC	PBH
573BY	JACKSONVILLE, FL	FL	322	8	CBOC	PBO
573BZ	DAYTONA BEACH, FL	FL	321	8	CBOC	NPB
573GA	VALDOSTA, GA	GA	316	8	CBOC	NPB
573GD	OCALA, FL	FL	344	8	CBOC	NPB
573GE	SAINT AUGUSTINE, FL	FL	320	8	CBOC	NPB
573GF	TALLAHASSEE, FL	FL	323	8	CBOC	NPB
573GG	INVERNESS, FL	FL	344	8	CBOC	NPB
573GH	LEESBURG, FL	FL	347	8	CBOC	NPB
575	GRAND JUNCTION, CO	CO	815	19	VAMC	PBH
575GA	MONTROSE, CO	CO	814	19	CBOC	NPB
578	HINES, IL	IL	601	12	VAMC	PBH
578GA	JOLIET, IL	IL	604	12	CBOC	NPB
578GB	OAK PARK, IL	IL	603	12	CBOC	NPB
578GC	MANTENO, IL	IL	609	12	CBOC	NPB
578GD	AURORA, IL	IL	605	12	CBOC	NPB
578GE	ELGIN, IL	IL	601	12	CBOC	NPB
578GF	LA SALLE, IL	IL	613	12	CBOC	NPB
578GG	OAK LAWN, IL	IL	604	12	CBOC	NPB
580	HOUSTON, TX	TX	770	16	VAMC	PBH
580BY	BEAUMONT, TX	TX	777	16	CBOC	NPB
580BZ	LUFKIN, TX	TX	759	16	CBOC	NPB
581	HUNTINGTON, WV	WV	257	9	VAMC	PBH
581GA	PRESTONSBURG, KY	KY	416	9	CBOC	NPB
581GB	CHARLESTON, WV	WV	253	9	CBOC	NPB
581GD	WILLIAMSON, WV	WV	256	9	CBOC	NPB
583	INDIANAPOLIS, IN	IN	462	11	VAMC	PBH
583GA	TERRE HAUTE, IN	IN	478	11	CBOC	NPB
583GB	BLOOMINGTON, IN	IN	474	11	CBOC	NPB
585	IRON MOUNTAIN, MI	MI	498	12	VAMC	PBH

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585GA	HANCOCK/PORTAGE, MI	MI	499	12	CBOC	NPB
585GB	RHINELANDER, WI	WI	545	12	CBOC	NPB
585GC	MENOMINEE, MI	MI	498	12	CBOC	NPB
585GD	IRONWOOD, MI	MI	499	12	CBOC	NPB
585HA	MARQUETTE, MI	MI	498	12	CBOC	NPB
585HB	SAULT SAINTE MARIE, MI	MI	497	12	CBOC	NPB
586	JACKSON, MS	MS	392	16	VAMC	PBH
586GA	KOSCIUSKO, MS	MS	390	16	CBOC	NPB
586GB	MERIDIAN, MS	MS	393	16	CBOC	NPB
586GC	GREENVILLE, MS	MS	387	16	CBOC	NPB
586GD	HATTIESBURG, MS	MS	394	16	CBOC	NPB
586GE	NATCHEZ, MS	MS	391	16	CBOC	NPB
589	KANSAS CITY, MO	MO	641	15	VAMC	PBH
589A4	COLUMBIA, MO	MO	652	15	VAMC	PBH
589A5	TOPEKA, KS	KS	666	15	VAMC	PBH
589A6	LEAVENWORTH, KS	KS	660	15	VAMC	PBH
589A7	WICHITA, KS	KS	672	15	VAMC	PBH
589G1	WARRENSBURG, MO	MO	640	15	CBOC	NPB
589G2	DODGE CITY, KS	KS	678	15	CBOC	NPB
589G3	LIBERAL, KS	KS	679	15	CBOC	NPB
589G4	HAYS, KS	KS	676	15	CBOC	NPB
589G5	PARSONS, KS	KS	673	15	CBOC	NPB
589G6	SALINA, KS	KS	674	15	CBOC	NPB
589GB	BELTON, MO	MO	640	15	CBOC	NPB
589GC	PAOLA, KS	KS	660	15	CBOC	NPB
589GD	NEVADA, MO	MO	647	15	CBOC	NPB
589GE	KIRKSVILLE, MO	MO	635	15	CBOC	NPB
589GF	FORT LEONARD WOOD, MO	MO	654	15	CBOC	NPB
589GH	CAMDENTON, MO	MO	650	15	CBOC	NPB
589GI	SAINT JOSEPH, MO	MO	645	15	CBOC	NPB
589GJ	KANSAS CITY/WYANDOTTE, KS	KS	661	15	CBOC	NPB
589GK	ABILENE, KS	KS	674	15	CBOC	NPB
589GM	CHANUTE, KS	KS	667	15	CBOC	NPB
589GN	EMPORIA, KS	KS	668	15	CBOC	NPB
589GO	FORT RILEY, KS	KS	664	15	CBOC	NPB
589GP	GARNETT, KS	KS	660	15	CBOC	NPB
589GQ	HOLTON, KS	KS	664	15	CBOC	NPB
589GR	JUNCTION CITY, KS	KS	664	15	CBOC	NPB
589GS	RUSSELL, KS	KS	676	15	CBOC	NPB
589GT	SENECA, KS	KS	665	15	CBOC	NPB
589GU	LAWRENCE, KS	KS	660	15	CBOC	NPB
589GV	FORT SCOTT, KS	KS	667	15	CBOC	NPB
589GW	SALINA, KS	KS	674	15	CBOC	NPB
589GX	MEXICO, MO	MO	652	15	CBOC	NPB
589GY	SAINT JAMES, MO	MO	655	15	CBOC	NPB
589GZ	CAMERON, MO	MO	644	15	CBOC	NPB
590	HAMPTON, VA	VA	236	6	VAMC	PBH
590GA	NORFOLK, VA	VA	235	6	CBOC	NPB
593	LAS VEGAS, NV	NV	891	22	VAMC	PBH
593GA	LAS VEGAS CBOC, NV	NV	891	22	CBOC	PBO
593GB	HENDERSON, NV	NV	890	22	CBOC	PBO
593GC	PAHRUMP, NV	NV	890	22	CBOC	PBO
595	LEBANON, PA	PA	170	4	VAMC	PBH

Supplementary Table 3
VA Medical Facility Locations, Three-Digit ZIP Codes,
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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
595GA	CAMP HILL, PA	PA	170	4	CBOC	NPB
595GB	POTTSVILLE/SCHUYLKILL/SHENANDOAH, PA	PA	179	4	CBOC	PBO
595GC	LANCASTER, PA	PA	176	4	CBOC	NPB
595GD	READING, PA	PA	196	4	CBOC	NPB
595GE	YORK, PA	PA	174	4	CBOC	NPB
596	LEXINGTON LEESTOWN, KY	KY	405	9	VAMC	PBH
596A0	LEXINGTON COOPER DRIVE, KY	KY	405	9	VAMC	PBH
596GA	SOMERSET, KY	KY	425	9	CBOC	NPB
596HA	LEXINGTON MSORC, KY	KY	405	9	CBOC	PBO
598	LITTLE ROCK, AR	AR	722	16	VAMC	PBH
598A0	NORTH LITTLE ROCK, AR	AR	721	16	VAMC	PBH
598GA	MOUNTAIN HOME, AR	AR	726	16	CBOC	NPB
598GB	EL DORADO, AR	AR	717	16	CBOC	NPB
598GC	HOT SPRINGS, AR	AR	719	16	CBOC	NPB
600	LONG BEACH, CA	CA	908	22	VAMC	PBH
600GA	ANAHEIM, CA	CA	928	22	CBOC	NPB
600GB	SANTA ANA, CA	CA	927	22	CBOC	NPB
600GC	LONG BEACH CBOC, CA	CA	908	22	CBOC	PBO
600GD	SANTA FE SPRINGS, CA	CA	906	22	CBOC	NPB
603	LOUISVILLE, KY	KY	402	9	VAMC	PBH
603GA	FORT KNOX, KY	KY	401	9	CBOC	NPB
603GB	NEW ALBANY, IN	IN	471	9	CBOC	NPB
603GC	LOUISVILLE CBOC, KY	KY	402	9	CBOC	PBO
605	LOMA LINDA, CA	CA	923	22	VAMC	PBH
605GA	VICTORVILLE, CA	CA	923	22	CBOC	NPB
605GB	SUN CITY, CA	CA	923	22	CBOC	NPB
605GC	PALM DESERT, CA	CA	922	22	CBOC	NPB
605GD	CORONA, CA	CA	928	22	CBOC	NPB
605GE	UPLAND, CA	CA	917	22	CBOC	NPB
607	MADISON, WI	WI	537	12	VAMC	PBH
607GC	JANESVILLE, WI	WI	535	12	CBOC	NPB
607GD	BARABOO, WI	WI	539	12	CBOC	NPB
607GE	BEAVER DAM, WI	WI	539	12	CBOC	NPB
607HA	ROCKFORD, IL	IL	611	12	CBOC	NPB
608	MANCHESTER, NH	NH	031	1	VAMC	PBH
608GA	PORTSMOUTH, NH	NH	038	1	CBOC	NPB
608GC	WOLFEBORO, NH	NH	038	1	CBOC	NPB
608GD	CONWAY, NH	NH	038	1	CBOC	NPB
608HA	TILTON, NH	NH	032	1	CBOC	NPB
610	MARION, IN	IN	469	11	VAMC	PBH
610A4	FORT WAYNE, IN	IN	468	11	VAMC	PBH
610GA	SOUTH BEND, IN	IN	466	11	CBOC	NPB
610GB	MUNCIE, IN	IN	473	11	CBOC	NPB
612	MARTINEZ, CA	CA	945	21	VAMC	PBH
612A4	SACRAMENTO/MATHER AFB, CA	CA	958	21	VAMC	PBH
612B4	REDDING, CA	CA	960	21	CBOC	NPB
612BY	OAKLAND, CA	CA	946	21	CBOC	PBO
612CZ	TRAVIS AFB, CA	CA	945	21	CBOC	NPB
612GD	FAIRFIELD, CA	CA	945	21	CBOC	NPB
612GE	MARE ISLAND, CA	CA	945	21	CBOC	NPB
612GF	MARTINEZ CBOC, CA	CA	945	21	CBOC	NPB
612GG	CHICO, CA	CA	959	21	CBOC	NPB
612GH	MCCLELLAN AFB, CA	CA	956	21	CBOC	PBO

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VA Medical Facility Locations, Three-Digit ZIP Codes,
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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
613	MARTINSBURG, WV	WV	254	5	VAMC	PBH
613GA	CUMBERLAND, MD	MD	215	5	CBOC	NPB
613GB	HAGERSTOWN, MD	MD	217	5	CBOC	NPB
613GC	STEPHENS CITY, VA	VA	226	5	CBOC	NPB
613GD	FRANKLIN, WV	WV	268	5	CBOC	NPB
613GE	PETERSBURG, WV	WV	268	5	CBOC	NPB
613GF	HARRISONBURG, VA	VA	228	5	CBOC	NPB
614	MEMPHIS, TN	TN	381	9	VAMC	PBH
614GA	SMITHVILLE, MS	MS	388	9	CBOC	NPB
614GB	JONESBORO, AR	AR	724	9	CBOC	NPB
614GC	BYHALIA, MS	MS	386	9	CBOC	NPB
614GD	SAVANNAH, TN	TN	383	9	CBOC	NPB
618	MINNEAPOLIS, MN	MN	554	23	VAMC	PBH
618BY	SUPERIOR, WI	WI	548	23	CBOC	NPB
618GA	MANKATO, MN	MN	560	23	CBOC	NPB
618GB	HIBBING, MN	MN	557	23	CBOC	NPB
618GD	SAINT PAUL, MN	MN	551	23	CBOC	PBO
618GE	CHIPPEWA FALLS, WI	WI	547	23	CBOC	NPB
618GG	ROCHESTER, MN	MN	559	23	CBOC	NPB
619	MONTGOMERY, AL	AL	361	7	VAMC	PBH
619A4	TUSKEGEE, AL	AL	360	7	VAMC	PBH
619GA	COLUMBUS, GA	GA	319	7	CBOC	NPB
619GB	DOTHAN, AL	AL	363	7	CBOC	NPB
620	MONTROSE, NY	NY	105	3	VAMC	PBH
620A4	CASTLE POINT, NY	NY	125	3	VAMC	PBH
620GA	NEW CITY, NY	NY	109	3	CBOC	NPB
620GB	CARMEL, NY	NY	105	3	CBOC	NPB
620GD	WALLKILL, NY	NY	125	3	CBOC	NPB
620GE	PORT JERVIS, NY	NY	127	3	CBOC	NPB
620GF	HARRIS, NY	NY	127	3	CBOC	NPB
620GG	POUGHKEEPSIE, NY	NY	126	3	CBOC	NPB
621	MOUNTAIN HOME, TN	TN	376	9	VAMC	PBH
621GA	ROGERSVILLE, TN	TN	378	9	CBOC	NPB
621GB	MOUNTAIN CITY, TN	TN	376	9	CBOC	NPB
621GC	NORTON, VA	VA	242	9	CBOC	NPB
621GD	SAINT CHARLES, VA	VA	242	9	CBOC	NPB
623	MUSKOGEE, OK	OK	744	16	VAMC	PBH
623BY	TULSA, OK	OK	741	16	CBOC	NPB
623GA	MCALESTER, OK	OK	745	16	CBOC	NPB
626	NASHVILLE, TN	TN	372	9	VAMC	PBH
626A4	MURFREESBORO, TN	TN	371	9	VAMC	PBH
626BY	KNOXVILLE, TN	TN	379	9	CBOC	PBO
626GA	DOVER, TN	TN	370	9	CBOC	NPB
626GC	BOWLING GREEN, KY	KY	421	9	CBOC	NPB
626GD	HOPKINSVILLE, KY	KY	422	9	CBOC	NPB
626GE	CLARKSVILLE, TN	TN	370	9	CBOC	NPB
626GF	CHATTANOOGA, TN	TN	374	9	CBOC	NPB
626GG	TULLAHOMA/ARNOLD AFB, TN	TN	373	9	CBOC	NPB
626GH	COOKEVILLE, TN	TN	385	9	CBOC	NPB
629	NEW ORLEANS, LA	LA	701	16	VAMC	PBH
629BY	BATON ROUGE, LA	LA	708	16	CBOC	PBO
630	NEW YORK, NY	NY	100	3	VAMC	PBH
630A4	BROOKLYN, NY	NY	112	3	VAMC	PBH

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
630A5	SAINT ALBANS, NY	NY	114	3	VAMC	PBH
630B2	NEW YORK SOHO C&P UNIT, NY	NY	100	3	CBOC	PBO
630BZ	NEW YORK METHADONE, NY	NY	100	3	CBOC	PBO
630GA	HARLEM, NY	NY	100	3	CBOC	PBO
630GB	STATEN ISLAND, NY	NY	103	3	CBOC	PBO
630GC	BROOKLYN CHAPEL STREET, NY	NY	112	3	CBOC	PBO
630GD	BROOKLYN BEDFORD-STUYVESANT, NY	NY	112	3	CBOC	PBO
631	NORTHAMPTON, MA	MA	010	1	VAMC	PBH
631BY	SPRINGFIELD SOC, MA	MA	011	1	CBOC	PBO
631GA	NORTHAMPTON CBOC, MA	MA	010	1	CBOC	PBO
631GB	SPRINGFIELD CBOC, MA	MA	011	1	CBOC	NPB
631GC	PITTSFIELD, MA	MA	012	1	CBOC	NPB
631GD	GREENFIELD, MA	MA	013	1	CBOC	NPB
632	NORTHPORT/LONG ISLAND, NY	NY	117	3	VAMC	PBH
632GA	PLAINVIEW, NY	NY	118	3	CBOC	NPB
632HA	LYNBROOK, NY	NY	115	3	CBOC	NPB
632HB	RIVERHEAD, NY	NY	119	3	CBOC	NPB
632HC	ISLIP, NY	NY	117	3	CBOC	NPB
632HD	PATCHOGUE, NY	NY	117	3	CBOC	NPB
632HE	MOUNT SINAI, NY	NY	117	3	CBOC	NPB
632HF	LINDENHURST, NY	NY	117	3	CBOC	NPB
635	OKLAHOMA CITY, OK	OK	731	16	VAMC	PBH
635GA	LAWTON/FORT SILL, OK	OK	735	16	CBOC	NPB
635GB	WICHITA FALLS, TX	TX	763	16	CBOC	NPB
635GC	PONCA CITY, OK	OK	746	16	CBOC	NPB
635GD	KONAWA, OK	OK	748	16	CBOC	NPB
636	OMAHA, NE	NE	681	23	VAMC	PBH
636A4	GRAND ISLAND, NE	NE	688	23	VAMC	PBH
636A5	LINCOLN, NE	NE	685	23	VAMC	PBH
636A6	DES MOINES, IA	IA	503	23	VAMC	PBH
636A7	KNOXVILLE, IA	IA	501	23	VAMC	PBH
636A8	IOWA CITY, IA	IA	522	23	VAMC	PBH
636GA	NORFOLK, NE	NE	687	23	CBOC	NPB
636GB	NORTH PLATTE, NE	NE	691	23	CBOC	NPB
636GC	MASON CITY, IA	IA	504	23	CBOC	NPB
636GF	BETTENDORF, IA	IA	527	23	CBOC	NPB
636GG	QUINCY, IL	IL	623	23	CBOC	NPB
636GH	WATERLOO, IA	IA	507	23	CBOC	NPB
636GI	GALESBURG, IL	IL	614	23	CBOC	NPB
636GJ	DUBUQUE, IA	IA	520	23	CBOC	NPB
636GK	FORT DODGE, IA	IA	505	23	CBOC	NPB
637	ASHEVILLE, NC	NC	288	6	VAMC	PBH
640	PALO ALTO, CA	CA	943	21	VAMC	PBH
640A0	MENLO PARK, CA	CA	940	21	VAMC	PBH
640A4	LIVERMORE, CA	CA	945	21	VAMC	PBH
640BY	SAN JOSE, CA	CA	951	21	CBOC	NPB
640GA	CAPITOLA, CA	CA	950	21	CBOC	NPB
640GB	SONORA, CA	CA	953	21	CBOC	NPB
640HA	STOCKTON, CA	CA	952	21	CBOC	NPB
640HB	MODESTO, CA	CA	953	21	CBOC	NPB
640HC	MONTEREY/FORT ORD, CA	CA	939	21	CBOC	NPB
642	PHILADELPHIA, PA	PA	191	4	VAMC	PBH
642GA	FORT DIX, NJ	NJ	086	4	CBOC	NPB

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
642GB	CAPE MAY, NJ	NJ	082	4	CBOC	NPB
642GC	WILLOW GROVE, PA	PA	190	4	CBOC	NPB
644	PHOENIX, AZ	AZ	850	18	VAMC	PBH
644BY	MESA/WILLIAMS AFB, AZ	AZ	852	18	CBOC	NPB
644GA	SUN CITY, AZ	AZ	853	18	CBOC	NPB
644GB	SHOW LOW, AZ	AZ	859	18	CBOC	NPB
644GC	BUCKEYE, AZ	AZ	853	18	CBOC	NPB
644GD	PAYSON, AZ	AZ	855	18	CBOC	NPB
646	PITTSBURGH UNIV DR, PA	PA	152	4	VAMC	PBH
646A4	PITTSBURGH ASPINWALL, PA	PA	152	4	VAMC	PBH
646A5	PITTSBURGH HIGHLAND DR, PA	PA	152	4	VAMC	PBH
646GA	SAINT CLAIRSVILLE, OH	OH	439	4	CBOC	NPB
646GB	GREENSBURG, PA	PA	156	4	CBOC	NPB
646GC	ALIQUIPPA, PA	PA	150	4	CBOC	NPB
646GD	WASHINGTON, PA	PA	153	4	CBOC	NPB
648	PORTLAND, OR	OR	972	20	VAMC	PBH
648A4	VANCOUVER, WA	WA	986	20	VAMC	PBH
648GA	BEND, OR	OR	977	20	CBOC	NPB
648GB	SALEM, OR	OR	973	20	CBOC	NPB
648GC	LONGVIEW, WA	WA	986	20	CBOC	NPB
648GD	NORTH COAST, OR	OR	971	20	CBOC	NPB
649	PRESCOTT, AZ	AZ	863	18	VAMC	PBH
649GA	KINGMAN, AZ	AZ	864	18	CBOC	NPB
649GB	BELLEMONT, AZ	AZ	860	18	CBOC	NPB
649GC	LAKE HAVASU CITY, AZ	AZ	864	18	CBOC	NPB
649GD	BLACK CANYON CITY, AZ	AZ	853	18	CBOC	NPB
649GE	COTTONWOOD, AZ	AZ	863	18	CBOC	NPB
650	PROVIDENCE, RI	RI	029	1	VAMC	PBH
650GA	NEW BEDFORD, MA	MA	027	1	CBOC	NPB
650GB	HYANNIS, MA	MA	026	1	CBOC	NPB
650GC	OAK BLUFFS, MA	MA	025	1	CBOC	NPB
650GD	MIDDLETOWN, RI	RI	028	1	CBOC	NPB
650GE	NANTUCKET, MA	MA	025	1	CBOC	NPB
652	RICHMOND, VA	VA	232	6	VAMC	PBH
652GA	FREDERICKSBURG, VA	VA	224	6	CBOC	NPB
653	ROSEBURG, OR	OR	974	20	VAMC	PBH
653BY	EUGENE, OR	OR	974	20	CBOC	NPB
653GA	BANDON, OR	OR	974	20	CBOC	NPB
653GB	BROOKINGS, OR	OR	974	20	CBOC	NPB
654	RENO, NV	NV	895	21	VAMC	PBH
654GA	AUBURN, CA	CA	956	21	CBOC	NPB
654GB	MINDEN, NV	NV	894	21	CBOC	NPB
655	SAGINAW, MI	MI	486	11	VAMC	PBH
655GA	GAYLORD, MI	MI	497	11	CBOC	NPB
655GB	TRAVERSE CITY, MI	MI	496	11	CBOC	NPB
655GC	OSCODA, MI	MI	487	11	CBOC	NPB
656	SAINT CLOUD, MN	MN	563	23	VAMC	PBH
656GA	BRAINERD, MN	MN	564	23	CBOC	NPB
656GB	MONTEVIDEO, MN	MN	562	23	CBOC	NPB
657	SAINT LOUIS JOHN COCHRAN, MO	MO	631	15	VAMC	PBH
657A0	SAINT LOUIS JEFF BARRACKS, MO	MO	631	15	VAMC	PBH
657A4	POPLAR BLUFF, MO	MO	639	15	VAMC	PBH
657A5	MARION, IL	IL	629	15	VAMC	PBH

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
657GA	BELLEVILLE, IL	IL	622	15	CBOC	NPB
657GB	SAINT LOUIS CBOC, MO	MO	631	15	CBOC	PBO
657GC	EFFINGHAM, IL	IL	624	15	CBOC	NPB
657GD	SAINT CHARLES, MO	MO	633	15	CBOC	NPB
657GE	SPRINGFIELD, IL	IL	627	15	CBOC	NPB
657GF	WEST PLAINS, MO	MO	657	15	CBOC	NPB
657GG	PARAGOULD, AR	AR	724	15	CBOC	NPB
657GH	CAPE GIRARDEAU, MO	MO	637	15	CBOC	NPB
657GI	FARMINGTON, MO	MO	636	15	CBOC	NPB
657GJ	EVANSVILLE, IN	IN	477	15	CBOC	NPB
657GK	MOUNT VERNON, IL	IL	628	15	CBOC	NPB
657GL	PADUCAH, KY	KY	420	15	CBOC	NPB
657GM	EFFINGHAM, IL	IL	624	15	CBOC	NPB
657HK	SALEM, MO	MO	655	15	CBOC	NPB
658	SALEM, VA	VA	241	6	VAMC	PBH
658GA	TAZEWELL, VA	VA	246	6	CBOC	NPB
658GB	DANVILLE, VA	VA	245	6	CBOC	NPB
658HA	STUARTS DRAFT, VA	VA	244	6	CBOC	NPB
658HB	PULASKI, VA	VA	243	6	CBOC	NPB
658HC	LYNCHBURG, VA	VA	245	6	CBOC	NPB
658HD	HILLSVILLE, VA	VA	243	6	CBOC	NPB
658HE	MARTINSVILLE, VA	VA	241	6	CBOC	NPB
658HG	COVINGTON, VA	VA	244	6	CBOC	NPB
658HH	MARION, VA	VA	243	6	CBOC	NPB
659	SALISBURY, NC	NC	281	6	VAMC	PBH
659BY	WINSTON-SALEM, NC	NC	271	6	CBOC	NPB
659GA	CHARLOTTE, NC	NC	282	6	CBOC	NPB
660	SALT LAKE CITY, UT	UT	841	19	VAMC	PBH
660GA	POCATELLO, ID	ID	832	19	CBOC	NPB
660GB	OGDEN, UT	UT	844	19	CBOC	NPB
660GC	ELY, NV	NV	893	19	CBOC	NPB
660GD	ROOSEVELT, UT	UT	840	19	CBOC	NPB
660GE	OREM, UT	UT	840	19	CBOC	NPB
660GF	GREEN RIVER, WY	WY	829	19	CBOC	NPB
660GG	SAINT GEORGE, UT	UT	847	19	CBOC	NPB
660GI	NEPHI, UT	UT	846	19	CBOC	NPB
662	SAN FRANCISCO, CA	CA	941	21	VAMC	PBH
662BU	SAN FRANCISCO HOMELESS CTR, CA	CA	941	21	CBOC	NPB
662GA	SANTA ROSA, CA	CA	954	21	CBOC	NPB
662GC	EUREKA, CA	CA	955	21	CBOC	NPB
662GD	UKIAH, CA	CA	954	21	CBOC	NPB
663	SEATTLE, WA	WA	981	20	VAMC	PBH
663A4	AMERICAN LAKE/TACOMA, WA	WA	984	20	VAMC	PBH
663GA	LYNNWOOD/NORTHGATE, WA	WA	980	20	CBOC	NPB
663GB	BREMERTON, WA	WA	983	20	CBOC	NPB
664	SAN DIEGO, CA	CA	921	22	VAMC	PBH
664BY	SAN DIEGO CBOC, CA	CA	921	22	CBOC	PBO
664GA	EL CENTRO, CA	CA	922	22	CBOC	NPB
664GB	VISTA, CA	CA	920	22	CBOC	NPB
664GC	CHULA VISTA, CA	CA	919	22	CBOC	NPB
664GD	ESCONDIDO, CA	CA	920	22	CBOC	NPB
666	SHERIDAN, WY	WY	828	19	VAMC	PBH
666GB	CASPER, WY	WY	826	19	CBOC	NPB

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
666GC	RIVERTON, WY	WY	825	19	CBOC	NPB
666GD	POWELL, WY	WY	824	19	CBOC	NPB
666GE	GILLETTE, WY	WY	827	19	CBOC	NPB
667	SHREVEPORT, LA	LA	711	16	VAMC	PBH
667GA	TEXARKANA, TX	TX	755	16	CBOC	NPB
667GB	MONROE, LA	LA	712	16	CBOC	NPB
667GC	LONGVIEW, TX	TX	756	16	CBOC	NPB
668	SPOKANE, WA	WA	992	20	VAMC	PBH
668HK	SPOKANE MOC, WA	WA	992	20	CBOC	PBO
671	SAN ANTONIO, TX	TX	782	17	VAMC	PBH
671A4	KERRVILLE, TX	TX	780	17	VAMC	PBH
671B0	MCALLEN, TX	TX	785	17	CBOC	NPB
671BY	SAN ANTONIO CBOC, TX	TX	782	17	CBOC	PBO
671BZ	CORPUS CHRISTI, TX	TX	784	17	CBOC	NPB
671GA	BROWNSVILLE, TX	TX	785	17	CBOC	NPB
671GB	VICTORIA, TX	TX	779	17	CBOC	NPB
671GE	LAREDO, TX	TX	780	17	CBOC	NPB
671GF	SOUTH BEXAR COUNTY, TX	TX	782	17	CBOC	NPB
671GG	ALICE, TX	TX	783	17	CBOC	NPB
671GH	BEEVILLE, TX	TX	781	17	CBOC	NPB
671GI	KINGSVILLE, TX	TX	783	17	CBOC	NPB
671GJ	UVALDE, TX	TX	788	17	CBOC	NPB
671GK	SAN ANTONIO CBOC, TX	TX	782	17	CBOC	PBO
671GL	NEW BRAUNFELS, TX	TX	781	17	CBOC	NPB
672	SAN JUAN, PR	PR	009	8	VAMC	PBH
672B0	PONCE, PR	PR	007	8	CBOC	NPB
672BZ	MAYAGUEZ, PR	PR	006	8	CBOC	NPB
672GA	SAINT CROIX, VI	VI	008	8	CBOC	NPB
672GB	SAINT THOMAS, VI	VI	008	8	CBOC	NPB
672GC	ARECIBO, PR	PR	006	8	CBOC	NPB
672GD	KINGSHILL, VI	VI	008	8	CBOC	NPB
672GE	GUAYAMA, PR	PR	007	8	CBOC	NPB
673	TAMPA, FL	FL	336	8	VAMC	PBH
673BY	ORLANDO, FL	FL	328	8	CBOC	PBO
673BZ	PORT RICHEY, FL	FL	346	8	CBOC	NPB
673GA	VIERA/MELBOURNE, FL	FL	329	8	CBOC	NPB
673GB	LAKELAND, FL	FL	338	8	CBOC	NPB
673GC	BROOKSVILLE, FL	FL	346	8	CBOC	NPB
673GD	SANFORD, FL	FL	327	8	CBOC	NPB
673GE	KISSIMMEE, FL	FL	347	8	CBOC	NPB
673GF	ZEPHYRHILLS, FL	FL	335	8	CBOC	NPB
674	TEMPLE, TX	TX	765	17	VAMC	PBH
674A4	WACO, TX	TX	767	17	VAMC	PBH
674A5	MARLIN, TX	TX	766	17	VAMC	PBH
674BY	AUSTIN, TX	TX	787	17	CBOC	NPB
674GA	PALESTINE, TX	TX	758	17	CBOC	NPB
674GB	BROWNWOOD, TX	TX	768	17	CBOC	NPB
674GC	BRYAN/COLLEGE STATION, TX	TX	778	17	CBOC	NPB
674GD	CEDAR PARK, TX	TX	786	17	CBOC	NPB
676	TOMAH, WI	WI	546	12	VAMC	PBH
676GA	WAUSAU, WI	WI	544	12	CBOC	NPB
676GC	LA CROSSE, WI	WI	546	12	CBOC	NPB
676GD	WISCONSIN RAPIDS, WI	WI	544	12	CBOC	NPB

Supplementary Table 3
VA Medical Facility Locations, Three-Digit ZIP Codes, and Provider-Based/Non-Provider-Based Designations
As of December 5, 2003

Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
676GE	LOYAL, WI	WI	544	12	CBOC	NPB
676HB	WAUTOMA, WI	WI	549	12	CBOC	NPB
678	TUCSON, AZ	AZ	857	18	VAMC	PBH
678GA	SIERRA VISTA, AZ	AZ	856	18	CBOC	NPB
678GB	YUMA, AZ	AZ	853	18	CBOC	NPB
678GC	CASA GRANDE, AZ	AZ	852	18	CBOC	NPB
678GD	SAFFORD, AZ	AZ	855	18	CBOC	NPB
678GE	GREEN VALLEY, AZ	AZ	856	18	CBOC	NPB
679	TUSCALOOSA, AL	AL	354	7	VAMC	PBH
687	WALLA WALLA, WA	WA	993	20	VAMC	PBH
687GA	RICHLAND, WA	WA	993	20	CBOC	NPB
687GB	LEWISTON, ID	ID	835	20	CBOC	NPB
687HA	YAKIMA, WA	WA	989	20	CBOC	NPB
688	WASHINGTON, DC	DC	204	5	VAMC	PBH
688GA	ALEXANDRIA, VA	VA	223	5	CBOC	PBO
688GB	WASHINGTON SE, DC	DC	200	5	CBOC	PBO
688GC	LANDOVER, MD	MD	207	5	CBOC	NPB
688GD	CHARLOTTE HALL, MD	MD	206	5	CBOC	NPB
689	WEST HAVEN, CT	CT	065	1	VAMC	PBH
689A4	NEWINGTON, CT	CT	061	1	CBOC	NPB
689GA	WATERBURY, CT	CT	067	1	CBOC	NPB
689GB	STAMFORD, CT	CT	069	1	CBOC	NPB
689GC	WINDHAM, CT	CT	062	1	CBOC	NPB
689GD	WINSTED, CT	CT	060	1	CBOC	NPB
689GE	DANBURY, CT	CT	068	1	CBOC	NPB
689HA	WILLIMANTIC, CT	CT	062	1	CBOC	NPB
689HB	NORWICH, CT	CT	063	1	CBOC	NPB
689HC	NEW LONDON, CT	CT	063	1	CBOC	NPB
691	WEST LOS ANGELES, CA	CA	900	22	VAMC	PBH
691A4	SEPULVEDA, CA	CA	913	22	CBOC	PBO
691GA	WEST LOS ANGELES CBOC, CA	CA	900	22	CBOC	PBO
691GB	SANTA BARBARA, CA	CA	931	22	CBOC	NPB
691GC	GARDENA, CA	CA	902	22	CBOC	NPB
691GD	BAKERSFIELD, CA	CA	933	22	CBOC	NPB
691GE	LOS ANGELES CBOC, CA	CA	900	22	CBOC	PBO
691GF	EAST LOS ANGELES, CA	CA	900	22	CBOC	PBO
691GG	LANCASTER/ANTELOPE VALLEY, CA	CA	935	22	CBOC	NPB
691GK	SAN LUIS OBISPO, CA	CA	934	22	CBOC	NPB
691GL	LOMPOC, CA	CA	934	22	CBOC	NPB
691GM	PORT HUENEME/OXNARD, CA	CA	930	22	CBOC	NPB
691GN	LYNWOOD, CA	CA	902	22	CBOC	NPB
691GO	PASADENA, CA	CA	911	22	CBOC	PBO
692	WHITE CITY, OR	OR	975	20	DOM	PBO
692GA	KLAMATH FALLS, OR	OR	976	20	CBOC	NPB
693	WILKES-BARRE, PA	PA	187	4	VAMC	PBH
693B4	ALLENTOWN, PA	PA	181	4	CBOC	NPB
693GA	SAYRE, PA	PA	188	4	CBOC	NPB
693GB	WILLIAMSPORT, PA	PA	177	4	CBOC	NPB
693GC	TOBYHANNA, PA	PA	184	4	CBOC	NPB
693GD	SCRANTON, PA	PA	185	4	CBOC	NPB
693GE	POTTSVILLE/SCHUYLKILL/SHENANDOAH, PA	PA	179	4	CBOC	PBO
693GF	BERWICK, PA	PA	186	4	CBOC	NPB
693HK	WILKES-BARRE MOC, PA	PA	187	4	CBOC	PBO

Supplementary Table 3
VA Medical Facility Locations, Three-Digit ZIP Codes, and Provider-Based/Non-Provider-Based Designations
As of December 5, 2003

RC V2p0 Facility List 2003-12-05 FR.xls

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
695	MILWAUKEE, WI	WI	532	12	VAMC	PBH
695BY	APPLETON, WI	WI	549	12	CBOC	NPB
695GA	UNION GROVE, WI	WI	531	12	CBOC	NPB
695GC	CLEVELAND, WI	WI	530	12	CBOC	NPB
695HK	MILWAUKEE MOC, WI	WI	532	12	CBOC	NPB
756	EL PASO, TX	TX	799	18	IOC	PBO
756GA	LAS CRUCES, NM	NM	880	18	CBOC	NPB
757	COLUMBUS, OH	OH	432	10	IOC	PBO
757GA	ZANESVILLE, OH	OH	437	10	CBOC	NPB
757GB	GROVE CITY, OH	OH	431	10	CBOC	NPB

Abbreviations
ST = State
ZIP 3 = First three digits of ZIP Code
VN = Veterans Integrated Service Network
VAMC = VA Medical Center
CBOC = Community-Based Outpatient Clinic
PB = Provider-Based/Non-Provider-Based Designation
PBH = Provider-Based - Hospital
PBO = Provider-Based - Outpatient
NPB = Non-Provider-Based

[FR Doc. 03–31177 Filed 12–18–03; 8:45 am]
BILLING CODE 8320–01–C

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Procedures; VA Directive and Handbook 5021

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: The Department of Veterans Affairs (VA) is revising VA Directive and Handbook 5021, Employee/Management Relations, dated April 15, 2002, to include the delegation from the Under Secretary for Health to the Deputy Under Secretary for Health the authority to accept, reject, or remand findings and decisions of Disciplinary Appeals Boards (DABs) involving major adverse actions taken against title 38 employees who have completed the probationary period and the delegation from the Under Secretary for Health to the Deputy Under Secretary for Health for Operations and Management the authority to make the final decision regarding the timeliness of appeals to a DAB. This notice announces that the revisions to the amended regulations are available for review and comment.

DATES: Comments must be received on or before December 19, 2003. The proposed effective date of these amendments is 30 days after publication of this notice.

ADDRESSES: Send written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Robert MacDonald, Employee Relations Team Leader, Department of Veterans Affairs, Office of Human Resources Management (051E), 810 Vermont Avenue, NW., Washington, DC 20420. Mr. MacDonald may be reached at (202) 273–9707.

SUPPLEMENTARY INFORMATION: The Under Secretary for Health has delegated to the Deputy Under Secretary for Health the authority to accept, reject, or remand findings and decisions of Disciplinary Appeals Boards (DAB) in connection with non-probationary title 38 employees' appeals of major adverse actions. The Under Secretary for Health has also delegated authority to the Deputy Under Secretary for Health for Operations and Management the authority to make the final decision regarding the timeliness of appeals to a DAB. These delegations will alleviate the need to convene a DAB to determine timeliness and provide more timely decisions of DAB findings.

Dated: November 20, 2003.

Anthony J. Principi,
Secretary of Veterans Affair.

March 24, 2003.

Appendix A—Section C. Appeals to the Disciplinary Appeals Board

1. *Scope, Authority and Definitions.* This section governs appeals of major adverse actions which arise out of, or which include, a question of professional conduct or competence in the Department of Veterans Affairs (VA). Major adverse actions are suspensions (including indefinite suspensions), transfers, reductions in grade, reductions in basic pay, and discharges. A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence include issues of professional

judgment. This section applies to VA employees holding a full-time, permanent appointment under 38 U.S.C. 7401(l) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included in this category are: physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. The (preceding) categories of individuals are included in the term ''employee(s)'' as used in this section unless otherwise specified.

(Authority: 38 U.S.C. 501(a), 7401, 7403(b), 7421, 38 U.S.C. 7461–7464.)

2. *References.* a. Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102–40).

b. 38 U.S.C. 501(a), 7421, 7461, 7462, 7464.

3. *Filing An Appeal to the Disciplinary Appeals Board.* a. *Initiating an Appeal.* An employee subjected to a major adverse action which is based in whole or in part on a question of professional conduct or competence, may file a written notice of appeal to the Disciplinary Appeals Board under the provisions of this section. The employee may request a hearing before the Board. Any such request must be submitted in writing and accompany the employee's notice of appeal. The appeal must contain (1) the appellant's name, address, telephone number, designation of representative (if any), (2) a copy of the notice of action proposed and decision letter, (3) a statement as to whether the employee is requesting a hearing before the Board, (4) why the appellant believes the major adverse action taken was in error or should not have been taken, and (5) a statement describing the expected relief. The original appeal and the request for hearing, if any, must be submitted to the Under Secretary for Health or designee so as to be received within 30 days after the date of service of the written decision on the employee. Submission of the appeal must be by personal service, facsimile, or certified mail—return receipt requested. A copy of the appeal must be served on the decision official who took the action being appealed and any management representative of record.

b. *Establishing Timeliness of an Appeal.* For purposes of computing the 30-day period for filing an appeal, the date of service of the written decision on the employee will be determined by the date of receipt by the employee of the personal delivery, the signed receipt of certified mail, or presumed to be 5 days after depositing the decision in the U.S. mail if no acknowledged receipt is available. The Deputy Under Secretary for Health for Operations and Management will make a final decision regarding the determination that an appeal is filed untimely. The employee will be notified in writing, by letter, of this final determination. There are no further administrative appeal rights regarding the issue of timeliness.

* * * * *

8. Formal Hearing.

* * * * *

b. *Exclusion of Individuals During Proceeding.* Prior to testifying or, if subject to recall, no witness will be permitted to hear the testimony being given by another witness unless the witness is the appellant, or is assisting in the representation of either party. In any event, the Chairman of the Board will make the final determination on exclusion of individuals during any phase of the proceeding.

c. *Oaths.* The Chairman and Secretary of the Board shall have the authority to administer oaths or affirmations which will be made by all individuals giving testimony.

d. *Verbatim Record.* A verbatim record shall be maintained of Board hearings (*see* subparagraph g below for further details).

e. *Witnesses.* Both the appellant and management will have the right to call witnesses. The Chairman will, on his/her own initiative, call such witnesses on behalf of the Board as the Chairman deems necessary. The Chairman has the final authority to determine the acceptability of any witness.

f. *Scheduling of Hearing.* The hearing will be conducted on official Government time, and normally, without charge to leave of the employee(s) concerned.

g. *Record of Hearing.* (1) A verbatim record of the hearing proceedings will be prepared.

(2) The employee and/or his/her representative shall be provided a copy of the transcript of the formal hearing after authentication.

(Authority: 38 U.S.C. 501(a), 7421, 38 U.S.C. 7461–7464)

9. *Disciplinary Appeals Board Decisions.* a. *Findings.* The Board shall, with respect to each charge appealed, sustain the charge, dismiss the charge, or sustain the charge in part and dismiss the charge in part.

b. *Decision.* The Board has full authority to render a decision on an appeal. The Board shall reach a decision within 45 calendar days of completion of the hearing, if a hearing is convened. In any event, a decision will be made by the Board no later than 120 calendar days after the appeal is received by the Under Secretary for Health or designee.

(1) If any charge is sustained in whole or in part, the Board shall approve the action as imposed; approve the action with modification, reduction, or exception; or reverse the action.

(2) If none of the charges are sustained in whole or in part, the Board will reverse the decision.

c. *Action by the Deputy Under Secretary for Health.* The Under Secretary for Health has delegated the authority to execute decisions made by Disciplinary Appeals Boards to the Deputy Under Secretary for Health. The Deputy Under Secretary for Health shall execute the Board's decision in a timely manner, but in no case later than 90 calendar days after the Board's decision is received by the Deputy Under Secretary for Health. Pursuant to the Board's decision, the Deputy Under Secretary for Health may order reinstatement, award back pay in accordance with the Back Pay Act, and provide such other remedies as the Board found appropriate relating directly to the proposed action, including expungement of records relating to the action.

(1) However, if the Deputy Under Secretary for Health finds a decision of the Board to be clearly contrary to the evidence or unlawful the Deputy Under Secretary for Health may:

(a) Reverse the decision of the Board; or

(b) Vacate the decision of the Board and remand the matter to the Board for further consideration.

(2) If the decision, while not clearly contrary to the evidence or unlawful, is found to be not justified by the gravity of the charges, the Deputy Under Secretary for Health may mitigate the adverse action imposed.

(3) The Deputy Under Secretary for Health's execution of a Board's decision, or the mitigated action if appropriate, shall be the final administrative action in the case.

d. *Case Record.* The case record will consist of the notice of proposed adverse action, appellant's reply, if any, all evidence (documents or testimony) relied upon by the Board in reaching its decision, notice of decision to appellant, appellant's request for a hearing, Deputy Under Secretary for Health's or designee's appointment of Board, Board communications and notices related to the hearing, any Board rulings or submissions of the parties, verbatim record of any formal hearing, Board Action (VA Form 10–2543), Deputy Under Secretary for Health's execution of the Board's recommendation, and any Notification of Personnel Action (SF–50B).

(Authority: 38 U.S.C. 501(a), 7421, 38 U.S.C. 7461–7464)

10. *Review of Records.* The Chairman of a Board may review records or information covered by 38 U.S.C. 5701 and 1332 in accordance with 7464(c)(1) of title 38.

(Authority: 38 U.S.C. 501(a), 7421, 38 U.S.C. 7461–7464.)

VA Handbook 5021/Part V, Chapter 1

Part V. Title 38 Appeals to the Disciplinary Appeals Board, Chapter 1. General

1. *Scope, Authority and Definitions.* This chapter applies to Department of Veterans Affairs (VA) employees holding a full-time, permanent appointment under 38 U.S.C. 7401(l) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included in this category are: physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. These categories of individuals are included in the term ''employee(s)'' as used in this chapter unless otherwise specified. This chapter governs appeals of major adverse actions which arise out of, or which include, a question of professional conduct or competence in VA. Major adverse actions are suspensions (including indefinite suspensions), transfers, reductions in grade, reductions in basic pay, and discharges. A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence includes issues of professional judgment.

2. *Representation.* An employee of the Department may be designated by the decision official to represent management in any case before a Disciplinary Appeals Board. The decision official should direct requests for legal representation to the General Counsel or Regional Counsel, as appropriate.

3. *Filing an Appeal to the Disciplinary Appeals Board.* a. *Initiating an Appeal.* An employee subjected to a major adverse action, which is based in whole or in part on a question of professional conduct or competence, may file a written notice of appeal to the Disciplinary Appeals Board under the provisions of this part. The employee may request a hearing before the Board. Any such request must be submitted in writing and accompany the employee's notice of appeal. The appeal must contain (1) the appellant's name, address, telephone number, designation of representative (if any), (2) a copy of the notice of action proposed and decision letter, (3) a statement as to whether the employee is requesting a hearing before the Board, (4) why the appellant believes the major adverse action taken was in error or should not have been taken, and (5) a statement describing the expected relief. The original appeal and the request for hearing, if any, must be submitted to the Under Secretary for Health or designee, through the Office of Human Resources Management (051), so as to be received within 30 days after the date of service of the written decision on the employee. Submission of the appeal must be by personal service, facsimile, or certified mail return receipt requested. A copy of the appeal must be served on the decision official who took the action being appealed and any management representative of record at the time of filing.

b. *Establishing Timeliness of an Appeal.* For purposes of computing the 30-day period for filing an appeal, the date of service of the written decision on the employee will be determined by the date of receipt by the employee of the personal delivery, the signed receipt of certified mail, or presumed to be 5 days after depositing the decision in the U.S. mail if no acknowledged receipt is available. The Deputy Under Secretary for Health for Operations and Management will make a final decision regarding the determination that an appeal is filed untimely. The employee will be notified in writing, by letter, of this final determination. There are no further administrative appeal rights regarding the issue of timeliness.

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6. *Powers of the Chairperson of the Disciplinary Appeals Board.*

* * * * *

a. Taking proper steps to expedite the hearing of evidence, and speaking and acting for the Board;

b. Ruling on all questions arising during the proceedings, such as admissibility of evidence offered during the hearing, calling of witnesses, order of introduction of witnesses, etc.;

c. Obtaining further evidence concerning any issue under consideration by the Board at any stage of the proceedings;

d. Acting as the presiding officer, directing the regular and proper conduct of the proceedings, and authenticating, by his or her signature, instructions and proceedings of the Board;

e. Ruling on questions of disqualification of any member of the Board. In cases where the Chairperson is the challenged member, the question shall be resolved in accordance with paragraph 7e of this chapter;

f. Scheduling the specific hour and dates of hearings;

g. Closing the record;

h. Administering oaths or affirmations made by individuals giving testimony;

i. Ruling on motions from the parties; and

j. Calling witnesses on behalf of the Board.

7. *Procedure.* a. *Determining Jurisdiction.* When a Board is convened to consider an appeal, the Board shall first determine whether the case is properly before it prior to considering the merits of the appeal. The Board shall determine whether the matter appealed is a major adverse action as defined in part II of this handbook, and whether it arises out of or includes a question of professional conduct or competence. The determination of jurisdiction will be made as soon as practicable. The Board will make a record of its determination.

(1) The record of decision in any mixed case shall include a statement by the Board of its exclusive jurisdiction, citing 38 U.S.C. 7462(a) as the authority and the basis for such exclusive jurisdiction. A mixed case is one that includes both (a) a major adverse action arising out of, or including, a question of professional conduct or competence, and (b) a major adverse action which does not arise out of a question of professional conduct or competence or a disciplinary action.

(2) If necessary, the Board may develop the record to establish jurisdiction.

(3) If the Board determines that the appeal is not properly before it, *e.g.*, that it lacks jurisdiction, the Board shall fully set forth its reasons, including a statement of the appropriate appeal procedure. The Deputy Under Secretary for Health will take appropriate action on the decision of the Board as described in paragraph 9e of this chapter.

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8. *Formal Hearings.*

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(e) Technical advisors are not members of the Board and, therefore, do not possess any voting power.

9. *Disciplinary Appeals Board Decisions.*

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c. *Decision.* The Board has full authority to render a decision on an appeal. The Board shall reach a decision within 45 calendar days of completion of the hearing, if a hearing is convened. In any event, a decision will be made by the Board no later than 120 calendar days after the appeal is received by the Under Secretary for Health or designee.

(1) If any charge is sustained in whole or in part, the Board shall approve the action as imposed; approve the action with modification, reduction, or exception; or reverse the action.

(2) If none of the charges are sustained in whole or in part, the Board will reverse the action.

d. *Preparation of VA Form 10–2543.* Following deliberation and voting on the findings and any penalty, VA Form 10–2543 will be prepared by the Disciplinary Appeals Board considering the case. The Chairperson of the Board will forward the complete record, including its findings and decision, signed and dated by all members of the Board and the technical advisor, through the Office of Human Resources Management (051) to the [Deputy] Under Secretary for Health for appropriate action. VA Form 10–2543 will contain supporting rationale for each of the findings.

e. *Action by the Under Secretary for Health.* The Under Secretary for Health has delegated the authority to execute decisions made by Disciplinary Appeals Boards to the Deputy Under Secretary for Health. The Deputy Under Secretary for Health shall execute the Board's decision in a timely manner, but in no case later than 90 calendar days after the Board's decision is received by the Deputy Under Secretary for Health. Pursuant to the Board's decision, the Deputy Under Secretary for Health may order reinstatement, award back pay in accordance with the Back Pay Act, and provide such other remedies as the Board found appropriate relating directly to the proposed action, including expungement of records relating to the action.

(1) However, if the Deputy Under Secretary for Health finds a decision of the Board to be clearly contrary to the evidence or unlawful, the Deputy Under Secretary for Health may:

(a) Reverse the decision of the Board; or

(b) Vacate the decision of the Board and remand the matter to the Board for further consideration.

(2) If the decision, while not clearly contrary to the evidence or unlawful, is found to be not justified by the gravity of the charges, the Deputy Under Secretary for Health may mitigate the adverse action imposed.

(3) The Deputy Under Secretary for Health's execution of a Board's decision, or the mitigated action, if appropriate, shall be the final administrative action in the case.

f. *Remands.* In circumstances where the Deputy Under Secretary for Health vacates the Board's decision and remands the matter for further consideration, the Board shall normally render its subsequent decision within 45 calendar days of the completion of the hearing, if a hearing was convened after the remand.

(1) In any event, the Board's decision will be made no later than 90 calendar days after the remand is received by the Board Chairperson.

(2) If the remand is related solely to jurisdictional issues, then the Deputy Under Secretary for Health may establish a shorter resolution period.

g. *Case Record.* (1) The case record will consist of the notice of proposed adverse action, appellant's reply, if any, all evidence (documents or testimony) relied upon by the Board in reaching its decision, notice of decision to appellant, appellant's request for a hearing, Deputy Under Secretary for Health's or designee's appointment of Board, Board communications and notices related to the hearing, any Board rulings or submissions of the parties, verbatim record of any formal hearing, Board Action (VA Form 10–2543), Deputy Under Secretary for Health's execution of the Board's recommendation, and any Notification of Personnel Action (SF–50B).

(2) Major adverse action files, which have been involved with an appeal to the Disciplinary Appeals Board will be maintained by the Office of Human Resources Management, Human Resources Management Programs and Policies Service (051). Records are maintained and disposed of in accordance with the records disposition authorities found in General Records Schedule 1 and VA Records Control Schedule 10–1, except where otherwise required to be retained for a longer period of time.

(3) One copy of notice of decision will be provided to the employee, the employee's representative, and the official who decided the adverse action. Any SF–50B, Notification of Personnel Action, will be filed in the employee's personnel folder.

10. *Review of Records.* a. The Board Chairperson, upon request of an appellant (or the appellant's designated representative), may, in connection with the considerations of the Board, review confidential records or information covered by 38 U.S.C. 5701 and 7332 in accordance with 38 U.S.C. 7464(c)(1).

(1) The Board Chairperson may authorize the disclosure of such records or information to that employee (or representative) to the extent the Board considers appropriate for purposes of the proceedings of the Board.

(2) Decisions on requests to disclose records or information will be in writing.

b. In any such case, the Chairperson may direct that measures be taken to protect the personal privacy of individuals whose records are involved. * * *

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[FR Doc. 03–30876 Filed 12–18–03; 8:45 am]

BILLING CODE 8320–01–U

Federal Register

Friday,
December 19, 2003

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0017; FRL–7551–5]

RIN 2060–AE85

National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP), specifically mercury emissions, from mercury cell chlor-alkali plants. The final rule will limit mercury air emissions from these plants. The final rule will implement section 112(d) of the Clean Air Act (CAA) which requires all categories and subcategories of major sources and area sources listed under section 112(c) to meet hazardous air pollutant emission standards reflecting the application of the maximum achievable control technology (MACT). Mercury cell chlor-alkali plants are a subcategory of the chlorine production source category listed under the authority of section 112(c)(1) of the CAA. The chlorine production source category was also identified as a source of mercury under section 112(c)(6) that must be subjected to standards. In addition, mercury cell chlor-alkali plants were listed as an area source category under section 112(c)(3) and (k)(3)(B) of the CAA. The final rule, which will satisfy our requirement to issue 112(d) regulations under each of these listings (for mercury), will reduce mercury emissions by about 3,068 kilograms per year from the levels allowed by the existing Mercury NESHAP.

Mercury is a neurotoxicant that accumulates, primarily in the especially potent form of methylmercury, in aquatic food chains. The highest levels are reached in predator fish species. Mercury emitted to the air from various types of sources (usually in the elemental or inorganic forms) transports through the atmosphere and eventually deposits onto land or water bodies. When mercury is deposited to surface waters, natural processes (bacterial) can transform some of the mercury into methylmercury that accumulates in fish. Ingestion is the primary exposure route of interest for methylmercury. The health effect of greatest concern due to methylmercury is neurotoxicity, particularly with respect to fetuses and young children.

In addition, in this final action, we are utilizing our authority under section 112(d)(4) of the CAA not to regulation chlorine and hydrochloric acid (HCl) emissions from the mercury cell chlor-alkali plant subcategory.

EFFECTIVE DATE: December 19, 2003.

ADDRESSES: *Docket.* We have established an official public docket for this action under Docket ID No. OAR–2002–0017, A–2000–32, A–2002–09, and OAR–2002–0016 available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing the final rule, contact Mr. Iliam Rosario, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5308; fax number (919) 541–5600; electronic mail address: *rosario.iliam@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute.

The official public docket is the collection of materials that is available for public viewing. 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 Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled ''Docket.'' Once in the system, select ''search,'' then key in the appropriate docket identification number.

Judicial Review. Under CAA section 307(b), judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before February 17, 2004. Only those objections to the NESHAP which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2)of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC [1]	NAICS [2]	Regulated entities
Industry	2812	325181	Alkalies and Chlorine Manufacturing.

[1] Standard Industrial Classification.
[2] North American Information Classification System.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.8182 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office) described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an

electronic copy of the final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.*

Outline. The information in this preamble is organized as follows:

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I. Introduction and Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA contains our authorities for reducing emissions of hazardous air pollutants (HAP). Section 112(c)(1) of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Section 112(c)(6) requires us to list source categories and subcategories assuring that sources accounting for not less than 90 percent of the aggregate emissions of each of seven specific pollutants (including mercury) are subject to standards under section 112(d) of the CAA. Finally, section 112(c)(3) and (k)(3)(B) require that we list source categories to ensure that area sources representing 90 percent of the area source emissions of the 30 urban HAP are subject to regulation under section 112(d).

B. What Is the Source Category?

The chlorine production source category was initially listed as a category of major sources of HAP pursuant to section 112(c)(1) of the CAA on July 16, 1992 (57 FR 31576). At the time of the initial listing, we defined the chlorine production source category as follows:

> The Chlorine Production Source Category includes any facility engaged in the production of chlorine. The category includes, but is not limited to, facilities producing chlorine by the following production methods: diaphragm cell, mercury cell, membrane cell, hybrid fuel cell, Downs cell, potash manufacture, hydrochloric acid decomposition, nitrosyl chloride process, nitric acid/salt process, Kel-Chlor process, and sodium chloride/sulfuric acid process.

In our subsequent analysis of the chlorine production source category, we did not identify any facilities that produce chlorine using hybrid fuel cells, the nitrosyl chloride process, the Kel-Chlor process, the sodium chloride/sulfuric acid process, or as a by-product from potash manufacturing. The majority of the source category is made up of chlor-alkali plants that produce chlorine and caustic (sodium hydroxide) using mercury cells, diaphragm cells, or membrane cells. We also identified operating plants that produce chlorine as a by-product: one from the production of sodium metal in Down cells, another from the production of potassium nitrate fertilizer that uses the nitric acid/salt process, and a third that produces chlorine as a by-product from primary magnesium refining (magnesium refining is a separately listed source category and will be addressed on its own in a separate rulemaking). In addition, at a site where a membrane cell process is located, we have also identified a process that produces chlorine through the decomposition of HCl. Our analysis shows that the only HAP emitted from sources within this chlorine production source category are chlorine, HCl, and mercury; and mercury is only emitted from mercury cell chlor-alkali plants.

In addition to the listing pursuant to section 112(c)(1), chlor-alkali production was among the categories of sources identified pursuant to section 112(c)(6) to achieve the 90 percent goal for mercury. While this category was titled ''chlor-alkali production,'' the only sources of mercury emissions are mercury cell chlor-alkali plants. However, the mercury cell chlor-alkali subcategory was not officially ''listed'' under section 112(c)(6) because the chlorine production source category was already listed under section 112(c)(1), and sources of mercury emissions at mercury cell chlor-alkali plants would be subject to section 112(d)(2) standards via that chlorine production source category listing.

Finally, on July 19, 1999 (64 FR 38706), we listed Mercury Cell Chlor-Alkali Plants as an area source category. In this listing, Mercury Cell Chlor-Alkali Plants were identified as one of the area source categories that contribute at least 15 percent of the total area source mercury emissions.

Because of the differences in the production methods and the HAP emitted, we decided to divide the chlorine production category into two subcategories: (1) Mercury cell chlor-alkali plants, and (2) chlorine production plants that do not rely upon mercury cells for chlorine production (diaphragm cell chlor-alkali plants, membrane cell chlor-alkali plants, *etc.*). Thus, on July 3, 2002, we issued separate proposals to address the emissions of mercury from the mercury cell chlor-alkali plant subcategory

sources (67 FR 44672) and the emissions of chlorine and HCl from both non-mercury cell chlorine production subcategory sources and mercury chlor-alkali plant subcategory sources (67 FR 44713).

C. What Criteria Are Used in the Development of NESHAP?

Section 112(d)(2) of the CAA specifies that NESHAP for new and existing sources must reflect the maximum degree of reduction in HAP emissions that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental benefits, and energy requirements. This level of control is commonly referred to as MACT.

Section 112(d)(3) defines the minimum level of control or floor allowed for NESHAP. In essence, the MACT floor ensures that the standards are set at a level that assures that all affected sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy impacts.

The CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. For pollutants for which a threshold has been established, section 112(d)(4) allows us ''to consider such threshold level, with an ample margin of safety, when establishing emissions standards. * * *.''

D. What Actions Were Proposed for This Source Category?

As discussed above, we divided the chlorine production source category into mercury cell chlor-alkali plants, and chlorine production plants that do not rely upon mercury cells for chlorine production (non-mercury cell chlorine production). On July 3, 2002, we proposed one action to address mercury emissions from the mercury cell chlor-alkali plant subcategory, and a separate action to address chlorine and HCl emissions from both subcategories.

For mercury emissions from mercury cell chlor-alkali plant subcategory sources, we issued a proposed rule based on MACT (67 FR 44672). Comments were received on the proposed rule and today's action issues the final rule for the mercury emissions from the mercury cell chlor-alkali plant subcategory.

We also proposed not to regulate chlorine and HCl emissions from both the mercury cell chlor-alkali plant and non-mercury cell chlorine production subcategories under our authority in section 112(d)(4) of the CAA (67 FR 44713). We based this decision on our determination that no further control is necessary because chlorine and HCl are ''health threshold pollutants,'' and chlorine and HCl levels emitted from chlorine production processes are below their threshold values within an ample margin of safety. The basis for the determination was a series of site-specific risk assessments for every chlorine production facility in the United States that was located at a major source plant site. In addition, we concluded, using a qualitative evaluation, that chlorine and HCl emissions from these chlorine production facilities did not result in adverse environmental effects. Background for this action is contained in Docket OAR–2002–0016 or Docket A–2002–09. Public comments on the proposed action were received, and we are finalizing actions addressing chlorine and HCl emissions in today's **Federal Register**. In today's final action, we are utilizing our authority under section 112(d)(4) not to regulate chlorine and HCl emissions from the mercury cell chlor-alkali plant subcategory. Final action addressing the emissions of chlorine and HCl from the non-mercury cell chlorine production subcategory is contained elsewhere in today's **Federal Register**.

E. How Did the Public Participate in Developing the Rulemaking?

Prior to proposal, we met with industry representatives and State regulatory authorities several times to discuss the data and information used to develop the proposed standards. In addition, these and other potential stakeholders, including equipment vendors and environmental groups, had opportunity to comment on the proposed standards.

The proposed rule was published in the **Federal Register** on July 3, 2002 (67 FR 44672). The preamble to the proposed rule discussed the availability of technical support documents, which described in detail the information gathered during the standards development process. Public comments were solicited at proposal.

We received nine public comment letters on the proposed rule (two of which were received well after the close of the comment period). The commenters represent the following affiliations: Mercury cell chlor-alkali companies, industrial trade associations, environmental/conservation organizations, and a women's advocacy organization. In the post-proposal period, we talked with commenters and other stakeholders to clarify comments and to assist in our analysis of the comments. Records of these contacts are found in Docket OAR–2002–0017 or Docket A–2000–32. All of the comments have been carefully considered, and, where appropriate, the final rule has been written to so reflect.

The proposed action not to regulate chlorine and HCl emissions was published in the **Federal Register** on July 3, 2002 (67 FR 44713). The preamble to the proposed action discussed the availability of technical support documents, which described in detail the information gathered during the standards development process. Public comments were solicited at proposal.

We received eight public comment letters on the proposed action. The commenters represent the following affiliations: Industry representatives, governmental entities, and environmental groups. In the post-proposal period, we talked with commenters and other stakeholders to clarify comments and to assist in our analysis of the comments. Records of these contacts are found in Docket OAR–2002–0016 or Docket A–2002–09. All of the comments have been carefully considered.

F. What Is a Mercury Cell Chlor-alkali Plant?

Today's NESHAP apply to mercury emissions from mercury cell chlor-alkali plants. Mercury cells are considerably larger than other types of chlor-alkali cells. A mercury cell plant typically has scores of individual cells (around 60 feet long and 9 feet wide) housed in one or more cell buildings. Mercury cells are electrically connected together in series with circuits of 30 or more cells.

In the mercury cell process, each cell actually involves two distinct operations. The electrolytic cell

produces chlorine gas, and a separate decomposer produces hydrogen gas and caustic solution. There is one decomposer associated with each cell, located directly underneath the cell. The cell and the decomposer are linked at the two ends by an inlet end box and an outlet end box.

A stream of liquid mercury flows in a continuous loop between the electrolytic cell and the decomposer. The mercury enters the cell at the inlet end box and flows down a slight grade to the outlet end box. At the outlet end box, the mercury flows out of the cell and falls down to the decomposer. After being processed in the decomposer, the mercury is pumped back up to the inlet end box of the electrolytic cell.

Saturated salt brine (using either sodium chloride or potassium chloride) is fed to the electrolytic cell at the inlet end box and flows toward the outlet end box on top of the mercury stream. The brine and mercury flow under a dimensionally stable metal anode made of a titanium substrate with a metal catalyst. The mercury forms the cathode of the cell.

An electric current is applied between the anode and the mercury cathode. The electric current causes a reaction producing chlorine gas at the anode and a mercury:sodium (HgNa) or mercury:potassium (HgK) amalgam at the cathode. Chlorine is collected at the top of the cell. The amalgam ultimately exits at the outlet end box, falling into the decomposer. Depleted brine also exits the cell at the outlet end box. This brine is generally piped to a tank for resaturation and reuse.

The decomposer is a packed bed reactor where the mercury amalgam is contacted with deionized water in the presence of a catalyst. The amalgam reacts with the water, regenerating elemental mercury and producing caustic (NaOH or KOH) and hydrogen. The caustic and mercury are separated in a trap at the end of the decomposer. The caustic and hydrogen are transferred to auxiliary processes for purification, and the mercury is recycled back to the cell.

Chlorine is collected from the tops of the mercury cells by a common header system which runs through the cell building. Hydrogen is collected from the amalgam decomposers in a common header system. The hydrogen stream contains a small amount of mercury vapor from the liquid mercury processed in the decomposer. To remove the mercury vapor, the hydrogen stream is typically cooled, passed through a mist eliminator, and usually sent to a finishing device such as a carbon adsorber. The hydrogen may then be discharged to the atmosphere, used on-site, or sold for use off-site.

In a mercury cell process, a 50 percent caustic solution is obtained directly from the amalgam decomposers. Thus, the mercury cell caustic requires little further processing to yield a commercial product.

Contaminated mercury and mercury-containing wastes are generated from a number of sources at a mercury cell plant. These include the hydrogen treatment operation, the brine and caustic treatment operations, and mercury leaks or spills. Many plants recover mercury from these wastes on-site in a mercury retort, or mercury thermal recovery unit.

Mercury is emitted from two point sources associated with the production of chlorine—the end box ventilation system and by-product hydrogen system. Mercury is also emitted from mercury thermal recovery units, which is also a point source. In addition, there are mercury fugitive emissions from the cell rooms and from the waste recovery areas.

In addition to mercury, chlorine and HCl are emitted from mercury cell plants. Chlorine can be emitted from the tail gas stream from the final liquefier, the cell room, and equipment in chlorine service. Hydrochloric acid is used to pretreat feed brine prior to entering a chlor-alkali cell, and at other locations throughout the process to adjust pH. It can also be emitted from storage tanks and equipment in HCl service.

G. How Does This Action Relate to the 40 CFR Part 61 Mercury NESHAP?

We promulgated the National Emission Standard for Mercury on April 6, 1973 (40 CFR part 61, subpart E).[1] Those standards (hereafter referred to as the Mercury NESHAP) limit mercury emissions from mercury cell chlor-alkali plants as well as mercury ore processing facilities and sludge incineration and drying plants. Specifically, the Mercury NESHAP limit mercury emissions from mercury cell chlor-alkali plants to 2.3 kilogram (kg) (5.1 pound (lb)) of mercury per 24-hour period and requires that mercury emissions be measured (in a one-time test) from hydrogen streams, end box ventilation systems, and the cell room ventilation system. As an alternative to measuring ventilation emissions from the cell room to demonstrate compliance, the Mercury NESHAP allow an owner or operator to assume a cell room ventilation emission value of 1.3 kg (2.9 lb) per day of mercury providing the owner/operator adheres to a suite of approved design, maintenance and housekeeping practices. Every mercury cell chlor-alkali plant currently in operation in the United States complies with the cell room ventilation provisions by carrying out these practices rather than by measuring mercury emissions discharged from the cell room. Since every plant uses the 1.3 kg per day assumed value for its cell room ventilation emissions, subtracting the 1.3 kg per day cell room value from the 2.3 kg per 24-hour period plantwide standard effectively creates an emission limit for the combined emissions from hydrogen streams and end box ventilation systems of 1.0 kg per day (1,000 grams per day).

The requirements in today's final standards are more stringent than the requirements in the Mercury NESHAP. Using the 1,000 grams per day value as the baseline, we estimate that mercury emissions will be reduced to less than 60 grams per day (on average) by the final rule. This represents about 94 percent reduction from the Mercury NESHAP baseline for vents. In addition, the work practice standards in today's final rule represent the most explicit compilation of practices currently employed by the industry, along with detailed recordkeeping and reporting requirements. While we cannot quantify the mercury emissions reductions that would be achieved by the final work practice standards, we are confident that their implementation would result in additional reductions in mercury emissions beyond that currently achieved by the existing Mercury NESHAP.

Every aspect of the Mercury NESHAP that applies to mercury cell chlor-alkali plants is addressed in today's final rule (40 CFR part 63, subpart IIIII). In fact, as discussed above, the requirements are more stringent than the respective requirements in the Mercury NESHAP. Consequently, when mercury cell chlor-alkali plants are required to comply with the final rule, the requirements of the Mercury NESHAP that apply to them will no longer be relevant or applicable. Therefore, upon the compliance date as indicated in § 63.8186 of the final rule, mercury cell chlor-alkali plants will no longer have any obligation to comply with the Mercury NESHAP, nor will they be allowed to comply with the Mercury NESHAP instead of the applicable provisions in 40 CFR part 63, subpart IIIII. Specifically, affected sources

[1] This regulatory program was originally set forth at 38 FR 8826; April 6, 1973; and amended at 40 FR 48302, October 14, 1975; 47 FR 24704, June 8, 1982; 49 FR 35770, September 12, 1984; 50 FR 46294, November 7, 1985; 52 FR 8726, March 19, 1987; and 53 FR 36972, September 23, 1988.

subject to the final rule would no longer be subject to §§ 61.52(a), 61.53(b) and (c), and 61.55(b), (c) and (d) of 40 CFR part 61, subpart E, after the compliance date, which is December 19, 2006.

II. Summary of Changes Since Proposal

The proposed rule contained a compliance date 2 years from the date that the final rule would appear in the **Federal Register**. In the final rule, the compliance date has been changed to 3 years from December 19, 2006. However, unlike the proposed rule, which would have required that performance tests be conducted within 180 days after the compliance date, the final rule requires that all performance tests be conducted on or before the compliance date.

For mercury cell chlor-alkali production facilities affected sources, the proposed rule included a single emission limitation that covered all mercury emissions from the two point sources associated with chlorine production in mercury cells: the by-product hydrogen stream and the end box ventilation system vent. The format of this limitation was total grams of mercury per Megagram of chlorine production (g Hg/Mg Cl_2). For the initial compliance determination, the aggregate mercury emissions from all hydrogen by-product streams and all end box ventilation system vents were divided by the chlorine production for the same period and compared with the applicable emission limitation. Continuous compliance would have then been demonstrated by continuously monitoring the mercury concentration in each stream and comparing the daily average mercury concentration against a level determined during the initial compliance test. Commenters objected to this daily averaging period for compliance purposes when the emission limitations were based on annual average emissions and chlorine production. In response to these comments, we have written the averaging time for continuous compliance as a 52-week period. Further, as discussed more below, rather than establishing surrogate mercury concentration operating limits for each vent, continuous compliance is determined by a direct comparison of the emissions per unit of chlorine production (g Hg/Mg Cl_2) for each 52-week compliance period and the emission limitation. This is a rolling average compliance period that is determined each week. That means a compliance determination is required each week for the previous 52-week period.

In addition to the averaging time for the by-product hydrogen/end box ventilation system vent, we changed the value of the emission limitation for plants with end box ventilation systems from the proposed limit of 0.067 g Hg/Mg Cl_2 to 0.076 g Hg/Mg Cl_2. The proposed limit of 0.033 g Hg/Mg Cl_2 for plants without end box ventilation systems is retained in the final rule.

In the final rule, we have written the method for determining continuous compliance for the point sources of emissions in both types of affected sources covered by the rule (by-product hydrogen streams and end box ventilation system vents at mercury cell chlor-alkali production facilities and mercury thermal recovery unit vents at mercury recovery facilities). In the proposed rule, performance tests would have been required to determine initial compliance with the applicable emission limitation. The proposed rule also would have required that the mercury concentration of each vent be monitored during these performance tests, and that a mercury concentration operating limit be established for each vent based on the monitoring results obtained during the test. Compliance with the emission limitation would have then been determined by comparing the results of the continuous monitoring of mercury concentration against the established operating limits. There were several comments received on this approach.

In response to these comments, continuous compliance in the final rule is determined via a direct comparison of emissions to the emission limitation rather than using mercury concentration operating limits as a surrogate. For by-product hydrogen streams and end box ventilation system vents, the aggregate mercury emissions will be determined, divided by the corresponding chlorine production, and compared with the emission limitation for each 52-week compliance period (as discussed above). For mercury thermal recovery unit vents, the measured mercury concentration will be directly compared against the emission limitations (which are in units of milligrams of mercury per dry standard cubic meter, or mg/dscm). Also, the final rule contains two options for measuring the mercury emissions for continuous compliance: Continuous mercury emission monitoring systems, and periodic sampling using EPA reference methods or approved alternative methods.

The proposed work practice provisions included a cell room monitoring program, which would have required that the mercury concentration be monitored in the cell room and corrective action taken when a plant-specific action level was exceeded. The final rule retains the cell room monitoring program, but it is as an alternative to the work practices. The optional cell room monitoring provisions in the final rule are more detailed and prescriptive than the requirements in the proposed rule, and the final rule requires the preparation and submittal of site-specific cell room monitoring plans. Since the cell room monitoring program was made optional, the final rule requires (if optional cell room monitoring is not chosen) the owner or operator to institute a floor-level mercury vapor measurement program. This program is designed to limit the amount of mercury vapor in the cell room environment through periodic measurement of mercury vapor levels.

The final rule also requires that the owner of each mercury cell chlor-alkali plant report the mass of virgin mercury added to the cells. Initial compliance with this requirement is demonstrated by reporting the mass of mercury added to cells for the 5 years preceding the compliance date. This is a requirement requested by commenters.

III. Summary of the Final Rule

A. What Is the Source Category?

The chlorine production source category contains the mercury cell chlor-alkali plant subcategory and includes all plants engaged in the manufacture of chlorine and caustic in mercury cells. Other non-mercury cell chlorine production plants used to produce chlorine and caustic, such as diaphragm cell and membrane cell technologies, are not covered by the final rule.

B. What Are the Affected Sources and Emission Points To Be Regulated?

The final rule defines two affected sources: Mercury cell chlor-alkali production facilities, and mercury recovery facilities. The former includes all cell rooms and ancillary operations used in the manufacture of chlorine, caustic, and by-product hydrogen at a plant site. The latter includes all processes and associated operations needed for mercury recovery from wastes.

Emission points addressed within mercury cell chlor-alkali production facilities include each mercury cell by-product hydrogen stream, each mercury cell end box ventilation system vent, and fugitive emission sources throughout each cell room and various areas. Emission points addressed within mercury recovery facilities include each

mercury thermal recovery unit vent and fugitive emission sources associated with storage areas for mercury-containing wastes.

C. What Are the Emission Limitations?

For new or reconstructed mercury cell chlor-alkali production facilities, the final rule prohibits mercury emissions.

For existing mercury cell chlor-alkali production facilities with end box ventilation systems, the final rule requires that aggregate mercury emissions from all by-product hydrogen streams and end box ventilation system vents not exceed 0.076 g Hg/Mg Cl_2 for any consecutive 52-week period. For existing mercury cell chlor-alkali production facilities without end box ventilation systems, the final rule requires that mercury emissions from all by-product hydrogen streams not exceed 0.033 g Hg/Mg Cl_2 for any consecutive 52-week period.

For new, reconstructed, or existing mercury recovery facilities with oven type mercury thermal recovery units, the final rule requires that total mercury emissions not exceed 23 mg/dscm from each oven type unit vent. For new, reconstructed, or existing mercury recovery facilities with non-oven type mercury thermal recovery units, the limit in the final rule is 4 mg/dscm.

D. What Are the Work Practice Standards?

The final rule contains a set of work practice standards to address and mitigate fugitive mercury releases at mercury cell chlor-alkali plants. These provisions include specific equipment standards such as the requirement that end boxes either be closed (that is, equipped with fixed covers), or that end box headspaces be routed to a ventilation system. Other examples include requirements that piping in liquid mercury service have smooth interiors, that cell room floors be free of cracks and spalling (*i.e.*, fragmentation by chipping) and coated with a material that resists mercury absorption, and that containers used to store liquid mercury have tight-fitting lids. The work practice standards also include operational requirements. Examples of these include requirements to allow electrolyzers and decomposers to cool before opening, to keep liquid mercury in end boxes and mercury pumps covered by an aqueous liquid at a temperature below its boiling point at all times, to maintain end box access port stoppers in good sealing condition, and to rinse all parts removed from the decomposer for maintenance prior to transport to another work area.

A cornerstone of the work practice standards is the inspection program for equipment problems, leaking equipment, liquid mercury accumulations and spills, and cracks or spalling in floors and pillars and beams. Specifically, the final rule requires that visual inspections be conducted twice each day to detect equipment problems, such as end box access port stoppers not securely in place, liquid mercury in open containers not covered by an aqueous liquid, or leaking vent hoses. If a problem is found during an inspection, the owner or operator will need to take immediate action to correct the problem. Monthly inspections for cracking or spalling in cell room floors are also required as well as semiannual inspections for cracks and spalling on pillars and beams. Any cracks or spalling found will need to be corrected within 1 month.

Visual inspections for liquid mercury spills or accumulations are also required twice per day. If a liquid mercury spill or accumulation is identified during an inspection, the owner or operator will need to initiate cleanup of the liquid mercury within 1 hour of its detection. Acceptable cleanup methods include wet vacuum cleaning or a suitable alternative method approved upon petition.

In addition to cleanup, the final rule requires that an inspection of equipment in the area of the spill or accumulation be conducted to identify the source of the liquid mercury. If the source is found, the owner or operator is required to repair the leaking equipment as discussed below. If the source is not found, the owner or operator will be required to reinspect the area every 6 hours until the source is identified or until no additional liquid mercury is found at that location.

Inspections of specific equipment for liquid mercury leaks are required once per day. If leaking equipment is identified, the final rule requires that any dripping mercury be contained and covered by an aqueous liquid, and that a first attempt to repair leaking equipment be made within 1 hour of the time it is identified. The final rule requires that leaking equipment be repaired within 4 hours of the time it is identified, although there are provisions for delaying repair of leaking equipment for up to 48 hours.

Inspections for hydrogen gas leaks are required twice per day. For a hydrogen leak at any location upstream of a hydrogen header, a first attempt at repair is required within 1 hour of detection of the leaking equipment, and the leaking equipment is required to be repaired within 4 hours (with provisions for delay of repair if the leaking equipment is isolated). For a hydrogen leak downstream of the hydrogen header but upstream of the final control device, a first attempt at repair is required within 4 hours, and complete repair required within 24 hours (with delay provisions if the header is isolated).

The work practice standards in the final rule require you to institute a floor-level mercury vapor measurement program. Under this program, mercury vapor levels are periodically measured and compared to an action level of 0.05 mg/m^3. The final rule specifies the actions to be taken when the action level is exceeded. If the action level is exceeded during any floor-level mercury vapor measurement evaluation, you are required to take specific actions to identify and correct the problem.

As an alternative to the full set of work practice standards (including the floor-level monitoring program), the final rule also includes an optional requirement to institute a cell room monitoring program whereby owners and operators continuously monitor mercury concentrations in the upper portion of each cell room and take corrective actions as soon as practicable when elevated mercury vapor levels are detected.

The program is not designed to be a continuous monitoring system inasmuch as the results would be used only to determine relative changes in mercury vapor levels rather than compliance with a cell room emission or operating limit. The owner or operator is required to establish an action level for each cell room based on preliminary monitoring to determine normal baseline conditions. The action level, or levels if appropriate, will then be established as a yet-to-be-determined multiple of the baseline values. Once the action level(s) is established, continuous monitoring must be conducted. If an action level is exceeded, actions to correct the situation are required to be initiated as soon as possible. If the elevated mercury vapor level is due to a maintenance activity, the owner or operator must ensure that all work practices related to that maintenance activity are followed. If a maintenance activity is not the cause, inspections and other actions will be needed to identify and correct the cause of the elevated mercury vapor level. Owners and operators utilizing this cell room monitoring program option are required to develop site-specific cell room monitoring plans describing their monitoring system and quality assurance/quality control

procedures that will be used, along with their action level.

The final rule establishes the duty for owners and operators to routinely wash surfaces throughout the plant where liquid mercury could accumulate. Owners and operators are required to prepare and follow a written washdown plan detailing how and how often specific areas specified in the final rule are to be washed down to remove any accumulations of liquid mercury.

Finally, the final rule requires owners or operators to record and report the mass of virgin mercury added to cells. Virgin mercury is defined as mercury that has not been processed in an onsite mercury thermal recovery unit or otherwise recovered from mercury-containing wastes onsite. In order to establish a baseline of mercury being added to the cells, the final rule requires owners or operators to submit the mass of virgin mercury added to cells for the 5 years preceding the compliance date.

E. What Are the Operation and Maintenance Requirements?

The final rule requires that each owner and operator always operate and maintain each affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing air emissions, as required under 40 CFR 63.6(e)(1)(i) of the NESHAP General Provisions. The final rule requires each owner and operator to prepare and implement a written startup, shutdown, and malfunction plan according to the operation and maintenance requirements in § 63.6(e)(3) of the NESHAP General Provisions.

F. What Are the General Compliance Requirements?

The final rule requires compliance with the emission limitations and applicable work practice requirements at all times, except during periods or startup, shutdown, and malfunction as defined in 40 CFR 63.2. The owner or operator must develop and implement a written startup, shutdown, and malfunction plan according to the requirements in 40 CFR 63.6(e)(3).

G. What Are the Initial Compliance Requirements?

The final rule requires compliance with emission limitations and work practices by December 19, 2006.

To demonstrate initial compliance with the emission limits for by-product hydrogen streams and end box ventilation system vents, the final rule requires each owner or operator to conduct performance tests using 40 CFR part 61, appendix A, Method 102 for by-product hydrogen streams, and 40 CFR part 61, appendix A, Method 101 or 101A for end box ventilation system vents. In addition, the final rule also includes procedures for reducing the mercury emissions data collected during the performance test to units of the standard (*i.e.*, g Hg/Mg Cl_2). Each performance test is required to consist of a minimum of three 2-hour runs with a minimum sample volume of 1.7 dscm and must be conducted in accordance with a site-specific test plan prepared according to the performance test quality assurance program requirements in § 63.7(c)(2) of the NESHAP General Provisions.

Concurrent with each test run, each owner or operator is required to determine the quantity of chlorine produced using an equation contained in the final rule which calculates chlorine production based on cell line electric current load.

Initial compliance is demonstrated by showing that the total mercury emission rate from all by-product hydrogen streams and all end box ventilation system vents for the test are less than 0.076 g Hg/Mg Cl_2 for plants with end box ventilation systems, or 0.033 g Hg/Mg Cl_2 for plants without end box ventilation systems.

In addition, if the final control device is not a nonregenerable carbon adsorber and continuous compliance will be demonstrated using the periodic monitoring option, the owner or operator is required to monitor the following parameters during the performance test to establish either a maximum or minimum monitoring value, as applicable for the control device:

- Exit gas temperature from uncontrolled streams;
- Outlet temperature of the gas stream for the final cooling system when no control devices other than coolers or demisters are used;
- The outlet temperature of the gas stream from the final cooling system when the cooling system is followed by a molecular sieve or regenerative carbon adsorber;
- Outlet concentration of available chlorine, pH, liquid flow rate, and inlet gas temperature of chlorinated brine scrubbers and hypochlorite scrubbers;
- The liquid flow rate and exit gas temperature for water scrubbers;
- The inlet gas temperature of regenerative carbon adsorption systems; or
- The temperature during the heating phase of the regeneration cycle for regenerative carbon adsorbers or molecular sieves.

As part of the initial compliance demonstration, the owner or operator must determine the maximum or minimum monitoring value by calculating the average of the data collected during the performance test. The exception to this is when the final control device is a regenerative carbon adsorber. In this case, the highest temperature reading during the performance test must be used.

To demonstrate initial compliance with the mercury thermal recovery unit emission limits, the final rule requires that owners or operators conduct a performance test for each vent using 40 CFR part 61, appendix A, Method 101 or 101A. The owner or operator is required to develop and follow a site-specific test plan according to § 63.7(c)(2) of the NESHAP General Provisions. Three test runs would need to be conducted at a point after the last control device for each vent.

Initial compliance is achieved if the average vent mercury concentration is less than 23 mg/dscm for each oven type vent or 4 mg/dscm for each non-oven type vent. In addition, if the final control device is not a nonregenerable carbon adsorber and continuous compliance will be demonstrated using the periodic monitoring option, the owner or operator is required to monitor the same parameters as required for by-product hydrogen streams and end box ventilation system vents and to establish the appropriate minimum or maximum monitoring value for the control device.

H. What Are the Continuous Compliance Requirements?

The final rule contains two options for continuous compliance with the emission limit for by-product hydrogen streams and end box ventilation system vents and the emission limit for mercury thermal recovery unit vents: Continuous monitoring using mercury continuous emissions monitors, or periodic monitoring using testing. Both of these options will produce results in the units of the standard, so continuous compliance will be demonstrated through a direct comparison of monitoring system results.

If mercury continuous emission monitors are used to comply with the final rule, a site-specific monitoring plan must be developed to ensure proper control device evaluation, and a performance evaluation is required according to the monitoring plan. For each monitor, the final rule requires the site-specific monitoring plan to address installation and siting, monitor performance specifications,

performance evaluation procedures and calibration criteria, ongoing operation and maintenance procedures, ongoing data assurance procedures, and ongoing recordkeeping and reporting procedures. It must also address how other parameters (*e.g.*, flow rate) needed to calculate the mass of mercury emissions from each emission point are to be monitored. If periodic weekly monitoring is the selected compliance method, the owner or operator is required to conduct tests on a weekly basis using either an EPA Reference Method (101, 101A, or 102) or an alternative method that has been validated using Method 301, 40 CFR part 63, appendix A. If the final control device is not a nonregenerable carbon adsorber, in addition to periodic testing, the final rule contains requirements for the continuous monitoring of control device-specific parameters.

To demonstrate continuous compliance, the final rule requires the owner or operator to reduce mercury emissions to 52-week averages and to maintain the 52-week average below 0.076 g Hg/Mg Cl_2 for plants with end box ventilation systems, or 0.033 g Hg/Mg Cl_2 for plants without end box ventilation systems. For mercury thermal recovery units, the owner or operator is required to determine daily average mercury emissions and maintain the daily average below 23 mg/dscm for each oven type vent or 4 mg/dscm for each non-oven type vent. The final rule requires the owner or operator to collect emissions data using either a continuous mercury emissions monitor, or by collecting weekly samples using periodic monitoring. If the periodic monitoring option is used and the final control device is not a nonregenerable carbon adsorber, the owner or operator is required to also monitor specific control device parameters and compare to the maximum or minimum monitoring values developed during the performance test. Continuous compliance is achieved if the monitoring values remain either below the maximum monitoring value, or above the minimum monitoring value, as appropriate.

I. How Are Initial and Continuous Compliance With the Work Practice Standards To Be Demonstrated?

The final rule requires compliance with the work practice standards within 3 years from December 19, 2003.

The final rule contains specific recordkeeping requirements related to the work practice standards. These include records of when inspections were conducted, problems identified, and actions taken to correct problems. Continuous compliance with work practice standards will be demonstrated by maintaining these required records.

Initial compliance with the washdown plan will be demonstrated by submission of the plan by the owner or operator and certification that they operate according to, or will operate according to, the plan. Continuous compliance with the plan will be demonstrated by maintaining related records. Records will also be required to demonstrate compliance with the cell room monitoring program.

J. What Are the Notification and Reporting Requirements?

The final rule requires that owners or operators submit Initial Notifications, Notifications of Intent to conduct a performance test, Notification of Compliance Status (NOCS), and compliance reports.

For the Initial Notification, we are requiring that each owner or operator notify us that their plant is subject to the NESHAP for mercury cell chlor-alkali plants, and that they provide other basic information about the plant. For existing sources, this notification would need to be submitted no later than April 19, 2004.

For the Notification of Intent report, we are requiring that each owner or operator notify us in writing of the intent to conduct a performance test at least 60 days before the performance test is scheduled to begin.

The NOCS for the work practice standards will be due 30 days after the compliance date for existing sources. In this notification, the owner or operator will need to certify that the work practice standards are being or will be met. Furthermore, we are requiring that the washdown plan be submitted as part of this notification, and that the owner or operator certify that they operate or will operate according to the plan.

For the emission limits where a performance test is required to demonstrate initial compliance (that is, the emission limits for by-product hydrogen streams and end box ventilation system vents and the mercury thermal recovery unit vent limits), the tests will have to be conducted no later than the compliance date, and the NOCS will be due 60 days after the completion of the performance test. The site-specific monitoring plan addressing the use of mercury continuous emission monitors for vents must be submitted as part of this notification.

Compliance reporting is required semiannually, with the first report due within the first 6 months after initial compliance.

K. What Are the Recordkeeping Requirements?

Records required by the final rule related to by-product hydrogen streams, end box ventilation system vents, and mercury thermal recovery unit vents include the following: Performance test results, records showing the establishment of the applicable mercury concentration operating limits (including records of the mercury concentration monitoring conducted during the performance tests), records of the continuous mercury concentration monitoring data, records of the daily average elemental mercury concentration values, and records associated with site-specific monitoring plans.

With regard to the work practice standards, the final rule requires that records be maintained to document when each required inspection was conducted and the results of each inspection. Records noting equipment problems (such as end box cover stoppers not securely in place or mercury in an open container not covered by an aqueous liquid) identified during a required inspection, and the corrective action taken would also be required. If equipment that is leaking mercury liquid or hydrogen/mercury vapor is identified during a required inspection or at any other time, the final rule requires records of when the leak was identified and when it was repaired. Similarly, if a mercury spill or accumulation is identified at any time, the final rule requires records of when the spill or accumulation was found and when it was cleaned up.

A copy of the current version of the washdown plan would need to be kept on-site and be available for inspection. Records of when washdowns were conducted would be required.

The final rule requires that copies of each notification and report that is submitted to comply with the final rule be kept and maintained for 5 years, the first 2 of which must be on-site.

IV. Summary of Major Comments and Responses

This section includes discussion of significant comments on the proposed rule. For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the ''Background Information Document for Promulgation of National Emissions Standards for Hazardous Air Pollutant (NESHAP): Mercury Emissions From Mercury Cell Chlor-Alkali Plants'' EPA–453/R–03–012 (hereafter called the ''response to comments document'') in Docket OAR–2002–0017 or A–2000–32.

The docket also contains the actual comment letters and supporting documentation developed for the final rule.

A. What Issues Were Raised Regarding the Sources That Are Subject to the Rule as Proposed?

There were no issues raised by commenters regarding the sources subject to the proposed rule and the affected source, as a mercury cell chlor-alkali plant is a distinct and easily identifiable entity. There were, however, issues raised regarding the proposed requirement for all affected sources to obtain a title V permit and regarding the specific emission points that were addressed in the proposed rule.

Comment: Three commenters disagreed with the proposed requirements for all mercury cell chlor-alkali plants to obtain a title V permit, including area sources. The commenters requested that this provision be deleted from the final rule. The commenters stated that the facilities affected by the proposal are minor sources of HAP emissions. All three commenters maintained that requiring minor source facilities to obtain title V permits would be burdensome, *e.g.*, due to duplicative recordkeeping and reporting provisions, for the area sources; one commenter further stated that this burden would not yield any environmental benefit. Additionally, according to this commenter, dropping the title V permit requirement for area sources would not lessen any substantive requirements for monitoring, recordkeeping, or operation of any and all air pollution control devices. Commenters noted that the CAA allows EPA to exempt certain sources from obtaining a title V permit ''* * * if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome * * *''.

One commenter noted that in previously promulgated area source MACT standards (*e.g.*, Dry Cleaning MACT and Halogenated Solvent Cleaning MACT), EPA identified area sources as being subject to title V permitting. However, EPA allowed the permitting authorities to defer area sources from title V permitting requirements until December 9, 2004.

In contrast, another commenter supported the proposed requirement to require all affected sources to obtain title V permits. The commenter argued that title V permits are needed because they consolidate sources' applicable requirements in a single place. The commenter further noted that ''* * * given the detailed work practice requirements, it is reasonable to expect significant source-specific tailoring of the standard for each plant's individual configuration.'' See, *e.g.*, 67 FR 44706–07. The commenter also stated that requiring title V permits of area sources of mercury is especially appropriate because a small quantity of mercury is as toxic as far greater amounts of other HAP.

Response: Section 502(a) of the CAA requires any source, including an area source, subject to standards or regulations under section 111 or 112 of the CAA to operate in compliance with a title V permit after the effective date of any title V permits program. The Administrator may not exempt any major source from the requirements of title V.

In order to exempt area sources under the final rule from title V requirements, the test in section 502(a) of the CAA must be met. Specifically, the Administrator must make a finding that title V requirements are impracticable, infeasible, or unnecessarily burdensome for the source category or categories in question. Commenters may provide data which would help the Administrator make such a finding, but the commenters who were opposed to area sources being permitted under the final rule did not provide any such data. Commenters providing supporting data for their arguments is consistent with what the Agency stated in its final rule for the Municipal Solid Waste Landfills NESHAP in reference to the test in section 502(a) of the CAA (68 FR 2227, 2234, January 16, 2003).

In terms of the commenters' concern about title V adding duplicative recordkeeping and reporting requirements, the only potential duplicative requirement that we are aware of is in relation to deviation reporting under the semiannual compliance report required by § 63.8254 of the final rule and the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). However, this potential duplication was addressed by § 63.8254(d) in the proposed rule and this has been clarified in the final rule.

As to the deferral for area sources subject to the Dry Cleaning MACT and the Halogenated Solvent Cleaning MACT, the area sources subject to these MACT standards were deferred from title V permitting until December 9, 2004. See final deferral rulemaking (64 FR 69637, December 14, 1999). This deferral was granted in part because of the concern that area sources would not be able to obtain the technical and procedural assistance from permitting authorities needed to file timely and complete title V applications given that permitting authorities would be focused on the permitting of major sources. However, as the title V program is no longer in its initial stages and the initial permitting of existing major sources is nearing completion, we would not be justified in granting a deferral to area sources under the final rule for the same reason.

In terms of the commenter who supported the permitting of affected sources under the final rule, we agree that the consolidation of requirements in a title V permit is one of the ways that title V helps assure compliance with all applicable requirements. As this commenter also pointed out, title V permits clarify which requirements in standards apply to a source where requirements may vary due to various factors, *e.g.*, design of the facility. Additionally, the title V regulations at 40 CFR part 70 and 40 CFR part 71 help a source assure compliance with its applicable requirements by requiring that a source self-certify to compliance initially and annually, by requiring that a source promptly report deviations from its permit requirements, and by requiring that a permit contain monitoring requirements. It is also important to note that the title V permitting process provides an opportunity for the public to comment on whether a source is complying with its applicable requirements. In short, title V permits can enhance the effectiveness of rules such as the final rule, and EPA, therefore, disagrees that there are no environmental benefits to requiring title V permits for area sources.

In conclusion, as the test in section 502(a) of the CAA has not been met, EPA has retained the requirement in the final rule that affected sources subject to the final rule must obtain title V permits. Therefore, whether an affected source under the final rule is a part of a major or area source, the major/area source is required to obtain a title V permit.

Comment: One commenter believed that the proposed rule violated the CAA because the Agency did not establish standards for some parts of chlor-alkali plants that emit mercury. The commenter noted that under the proposed rule, EPA defined two affected sources: Mercury cell chlor-alkali production facilities and mercury recovery facilities. The commenter did not agree with EPA's determination that within mercury cell chlor-alkali production facilities, chlorine purification, brine preparation and wastewater treatment operations should not be subject to emission standards

because they have low mercury air emissions. Similarly, the commenter did not agree with EPA's decision not to regulate chemical mercury recovery and recovery in batch purification stills at mercury recovery facilities. According to the commenter, the CAA does not allow the Agency to exempt certain classes, types and sizes of sources from emission standards, unless EPA finds no potential for emissions. Therefore, the commenter stated that EPA had a legal obligation to establish standards that cover all mercury-emitting parts of chlor-alkali facilities, and the Agency must re-visit and set emission standards for the parts of the production and recovery facilities with low mercury emissions.

Response: During development of the proposed rule, we did not receive any data to indicate that mercury was emitted from chlorine purification, brine preparation, or wastewater treatment operations, and our knowledge of the process indicated that any potential emissions would be very limited (67 FR 44674). Furthermore, we did not receive any data indicating that control measures designed to reduce HAP were in use at existing facilities that had these units. The same holds true for chemical mercury recovery and recovery in batch purification stills at mercury recovery facilities. Therefore, with no reported emissions and process evidence that any emissions would be very limited, we concluded that there was no potential for emissions. Adding to this the existence of a MACT floor of no control (because none are controlled), we did not regulate these processes.

The commenter did not provide emissions data that would indicate that these sources emit significant amounts of mercury, or emit mercury at all. Therefore, the final rule does not contain standards for mercury emissions from chlorine purification, brine preparation, wastewater treatment operations, chemical mercury recovery and recovery in batch purification stills.

We point out that the final rule does contain very stringent emission limitations for all point sources that have been demonstrated to be sources of mercury emissions. Further, the work practice requirements in the final rule address fugitive mercury emissions in all areas of the facility, including the chlorine purification, brine preparation, wastewater treatment areas, as well as areas where chemical mercury recovery processes and batch purification stills are located.

B. What Issues Were Raised Regarding the HAP Addressed by the Rule as Proposed?

As noted earlier, we divided the chlorine production category into two subcategories: Mercury cell chlor-alkali plants and chlorine production plants that do not rely upon mercury cells for chlorine production (diaphragm cell chlor-alkali plants, membrane cell chlor-alkali plants, etc.). On July 3, 2002, we issued separate proposals to address the emissions of mercury from the mercury cell chlor-alkali plant subcategory sources (67 FR 44672) and the emissions of chlorine and HCl from both the non-mercury cell chlorine production subcategory sources and the mercury cell chlor-alkali subcategory sources (67 FR 44713). Specifically, we proposed a rule for mercury emissions from mercury cell chlor-alkali plants, and we proposed not to regulate chlorine and HCl emissions from mercury cell chlor-alkali plants and non-mercury cell chlorine production plants under our authority in section 112(d)(4) of the CAA.

Comments were received regarding the proposed action not to regulate chlorine and HCl emissions (*see* Air Docket OAR–2002–0016 or Air Docket A–2002–09). The aspects of these comments related to the mercury cell chlor-alkali plant subcategory can be generally classified into two basic categories: Our statutory authority under section 112(d)(4); and the site-specific risk assessments that formed the basis for our decision.

Comments Related to the Section 112(d)(4) Authority

Comment: Several comments were received related to our decision not to regulate chlorine and HCl emissions from chlorine production under the authority of section 112(d)(4). Some commenters supported this decision and stated the interpretation of our authority under section 112(d)(4) was appropriate and supported by the legislative history. In contrast, other commenters disagreed with EPA's interpretation of section 112(d)(4). Finally, some of the commenters stated that EPA should use its authority under section 112(c)(9)(B)(ii).

One commenter stated that EPA conducted an appropriate analysis to determine that human exposures from ambient concentrations are well below threshold values with an ample margin of safety. According to another commenter, any further regulation of chlorine and HCl emissions from the chlorine production industry would have no environmental benefits, but would result in costs for monitoring, recordkeeping, and reporting efforts to certify compliance with any requirements. The commenter was concerned that a regulation would also stretch EPA's limited resources in monitoring for compliance. Three commenters stated that EPA's interpretation of their authority under section 112(d)(4) was supported by the legislative history, which emphasizes that Congress included section 112(d)(4) in the CAA to prevent unnecessary regulation of source categories. The commenter agreed that under section 112(d)(4), once EPA establishes that a pollutant has a health threshold and that exposure to that pollutant's emissions are below the health threshold, EPA should refrain from setting MACT standards for that pollutant. The commenter further suggested that EPA should use section 112(d)(4) whenever setting emission standards under section 112(d).

Three commenters disagreed with EPA's interpretation of section 112(d)(4). They did not believe that section 112(d)(4) could be used as an alternative to setting MACT standards under section 112(d)(3). One commenter noted that the phrase ''in lieu of'' was not included in the section 112(d)(4) provisions and that its absence was intentional. In support of their claim, the commenter pointed to section 112(d)(5), which does contain the phrase ''in lieu of.'' The commenter interpreted section 112(d)(4) to mean that health-based thresholds can be considered when establishing the degree of MACT requirements, but not in place of the requirement to establish a MACT floor pursuant to section 112(d)(3).

The commenter also pointed to the provisions of section 112(c)(2) which require the Administrator to establish NESHAP for listed source categories and subcategories. The commenter was concerned that EPA evaluated emissions from chlorine production plants and concluded that since they do not pose a threat to human health and the environment, the Administrator is relieved of her responsibilities to establish a MACT standard. The commenter maintained that this position is not supported by section 112(c)(2).

The commenter also referred to section 112(d)(1), stating that EPA did not have the authority to ''make a determination of no regulation for a listed source category or pollutant.''

Finally, the commenter referred to section 112(d)(3), which contains the MACT floor provisions. According to the commenter, the intent of the NESHAP program is to develop a MACT

floor, and EPA is not fulfilling the requirements of the CAA by not performing such an analysis. The commenter stated that a majority of facilities identified in the analysis have adequate controls due to State regulations and these controls should be incorporated into the MACT floor evaluation. The commenter was particularly concerned that by not developing a MACT floor, no new-source MACT standards were created. The commenter requested that EPA perform a MACT floor analysis and develop a NESHAP for new sources.

Two of the commenters stated that EPA should support its decision not to regulate the chlorine production source category by citing the provisions of section 112(c)(9)(B)(ii) in addition to the provisions of section 112(d)(4). The commenters stated that the evaluation performed by EPA would also be sufficient for deleting sources under section 112(c)(9)(B)(ii) and that EPA's proposal to not regulate chlorine production is similar to deleting a subcategory of the Chlorine Production source category. Therefore, in addition to using the authority under section 112(d)(4), the commenters suggested that EPA delete the subcategory using the authority under section 112(c)(9)(B)(ii) to avoid any uncertainty over the use of its authority under section 112(d)(4).

Response: The EPA has the authority under CAA section 112(d)(4) to decide not to establish a NESHAP for chlorine and HCl emissions from certain chlorine production facilities. We have decided to limit our use of section 112(d)(4) to the emissions of chlorine and HCl from sources within the mercury cell chlor-alkali subcategory. While we have decided to establish no standards for the emissions of these two HAP from sources in the mercury cell chlor-alkali plant subcategory, we are establishing standards for the mercury emissions from the sources within that subcategory. As explained elsewhere in today's **Federal Register**, we have decided to delete the non-mercury cell chlorine production plants subcategory under CAA section 112(c)(9)(B)(ii). The only HAP emitted by the non-mercury cell chlorine production sources are chlorine and HCl.

Contrary to other commenters claims that our use of section 112(d)(4) is inappropriate, both the statutory language and the legislative history of the provision support our decision not to set limitations for chlorine and HCl emissions from sources in the mercury cell chlor-alkali plant subcategory. The language of section 112(d)(4) provides the Agency with ample discretion to utilize a risk-based approach in determining whether to establish emission standards for those HAP where we determine that the HAP are ''threshold pollutants'' and that the standard (or no standard) will achieve an ''ample margin of safety.''

The statutory language in section 112(d)(4) is ambiguous. Thus, under the Supreme Court's decision in *Chevron* v. *NRDC,* 467 U.S. 837 (1984), the Agency has the discretion to interpret the language to allow us to establish NESHAP that do set limitations on certain HAP emitted from sources (''when establishing standards'') but to also decide not to set limitations on other HAP emitted from these same sources if the other HAP are threshold pollutants and the risk from the emissions are so low that no standard for that second set of HAP is necessary to protect the public and the environment with ''an ample margin of safety.''

This approach is consistent with prior decisions EPA has made in the context of two other NESHAP. First, in the NESHAP for combustion sources at pulp mills (40 CFR part 63, subpart MM), we chose not to set a standard for HCl emissions from recovery furnaces, while we did set standards for other HAP emitted from the same sources within the category. We explained this decision in the preamble to the proposed MACT standard and received no adverse comment on the approach (63 FR 18754, 18765–68, April 15, 1998). Second, we proposed to set no standard under section 112(d)(4) for HCl emitted from lime kilns, while we also proposed to set standards for other HAP emitted by these same sources (67 FR 78046 December 20, 2002). We also received no adverse comment on that proposed decision. While we originally proposed to utilize section 112(d)(4) to set no standard for chlorine and HCl from chlorine production sources in a separate notice of the **Federal Register** (67 FR 44713, July 3, 2002), we made it clear that the proposed use of section 112(d)(4) would apply to emissions of these two HAP from mercury cell chlor-alkali sources (as well as the emissions of chlorine and HCl from other chlorine production sources).

We do not agree that Congress' use of the phrase ''in lieu of'' in CAA section 112(d)(5) so clearly restricts any possible interpretation of CAA section 112(d)(4) such that some form of a MACT standard must always be set even when the criteria of section 112(d)(4) are met. Instead, we interpret that Congress enacted section 112(d)(4) to provide EPA with the discretion to take risk into account and decide that standards need not be set when the HAP are threshold pollutants and levels being emitted are below the threshold value with an ample margin of safety. Moreover, in each case where we have exercised authority under section 112(d)(4), we have established standards in each category (or subcategory, as here) for those pollutants that do not satisfy the threshold pollutant and ample margin of safety statutory criteria.

We also disagree with the commenter who argued that the provision in section 112(c)(2), which requires the Administrator to establish emission standards for listed categories and subcategories, has much bearing on our use of section 112(d)(4) in this circumstance. By setting a standard for the emission of mercury from the mercury cell chlor-alkali plant subcategory, we are fulfilling our obligations under section 112(c)(2). As stated earlier, we have utilized the same approach in our other uses of section 112(d)(4), *e.g.*, HCl emissions from combustion sources at pulp mills and lime production sources.

The statutory language in section 112(d)(1) and (3) does not prevent us from deciding that no emission standard is necessary for a particular threshold pollutant which is being emitted at levels well below the ample margin of safety when we are also establishing standards for HAP emitted from sources in that same category or subcategory. This approach to our use of section 112(d)(4) is consistent with the statutory language of section 112(d)(1) and (3). We are establishing emission standards for the listed category or subcategory, but are deciding that no MACT floor need be established and no emission standard set for those HAP that meet the criteria of ''threshold pollutant'' and ''ample margin of safety.''

With regard to the concerns the commenter raised about the failure to set a standard for new sources, our review of the mercury cell subcategory indicates that no new mercury cell chlor-alkali plants will be constructed. Given that our emission standard for new sources in the mercury cell chlor-alkali subcategory prohibits the emission of mercury, we do not believe any new sources using mercury cells for chlorine production will ever be constructed (or reconstructed). Therefore, this no-mercury emissions requirement in the final rule will, in effect, also ensure that there are no chlorine or HCl emissions from new mercury cell facilities.

In response to other commenters' suggestion that we utilize the authority of section 112(c)(9)(B)(ii) to delete the chlorine production category, we have

decided to exercise our authority under that statutory provision for the non-mercury cell chlorine production subcategory. That decision is discussed in a separate notice in today's **Federal Register.** However, we are not deleting the mercury cell chlor-alkali plant subcategory because the sources within the category also emit mercury, and we are establishing emissions standards for mercury emissions in today's final rule.

Comment: Some commenters concluded that we did not establish either cancer or noncancer thresholds for HCl and chlorine and, therefore, it is illegal for EPA to attempt to use section 112(d)(4) to set standards.

Response: The ''threshold level'' in section 112(d)(4) refers to the level of concentration of a chemical under which no health effects are expected from exposure, although this term is not defined in section 112. Further, section 112 does not address the process that must be followed to ''establish'' a threshold level.

The reference concentration (RfC) is a ''long-term'' threshold, defined as an estimate of a daily inhalation exposure that, over a lifetime, would not likely result in the occurrence of noncancer health effects in humans. We have determined that the RfC for HCl of 20 micrograms per cubic meter ($\mu g/m^3$) is an appropriate threshold value for assessing risk to humans associated with exposure to HCl through inhalation *http://www.epa.gov/iris/subst/0396.htm.*

In cases where we have not studied a chemical itself, we rely on the studies of other governmental agencies, such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the Office of Health Hazard Assessment of California's Environmental Protection Agency (CAL EPA), for RfC values. The CAL EPA developed an RfC value of 0.2 $\mu g/m^3$ for chlorine based on a large inhalation study with rats.

Acute exposure guideline level (AEGL) toxicity values are estimates of adverse health effects due to a single exposure lasting 8 hours or less. The confidence in the AEGL (a qualitative rating of either low, medium, or high) is based on the number of studies available and the quality of the data. Consensus toxicity values for effects of acute exposures have been developed by several different organizations, and we are beginning to develop such values. A national advisory committee organized by EPA has developed AEGL's for priority chemicals for 30-minute, 1-hour, 4-hour, and 8-hour airborne exposures. They have also determined the levels of these chemicals at each exposure duration that will protect against discomfort (AEGL1), serious effects (AEGL2), and life-threatening effects or death (AEGL3). Hydrogen chloride has been assigned AEGL values (65 FR 39264, June 23, 2000), including the 1-hour, AEGL1 of 2,700 $\mu g/m^3$ used in our revised analysis. Chlorine has also been assigned AEGL values (62 FR 58840), including the 1-hour AEGL1 of 1,500 $\mu g/m^3$ used in our revised analysis.

We maintain that the listing of health thresholds by EPA and other organizations in the public domain as discussed above has ''established'' health thresholds for HCl and chlorine. Further, the recognition of these levels by EPA, ASTDR, and CAL EPA indicates that chlorine and HCl are threshold pollutants.

Moreover, we provided the public an opportunity to comment on the thresholds for chlorine and HCl that we used in our original analysis for the proposed action (67 FR 44716). We used the same threshold level for HCl for both the proposed and final NESHAP for the pulp and paper mill category. We have also used the same threshold for HCl in the proposed and final NESHAP for lime production (67 FR 78046; final action is anticipated in August 2003). There is no requirement in section 112(d)(4) that EPA develop or finalize a threshold for a particular HAP in a certain manner. The thresholds we have used for both HCl and chlorine are consistent with the statutory language in section 112(d)(4).

Comments Related to the Risk Assessment

Comment: In the analysis for the proposed action (67 FR 44713), we used the HCl RfC to determine the long-term health effects of chlorine emissions, since chlorine photolyzes very quickly to HCl in sunlight. Two comments supported this methodology and stated that our decision was based on sound scientific knowledge of the pollutants of concern.

In contrast, two other commenters did not agree with our use of the HCl RfC as a threshold level for chlorine. The commenters stated that not all of the annual chlorine emissions can be considered as HCl and, therefore, the chlorine exposure was underestimated. The commenters argued that chlorine emissions will not undergo photolysis to convert to HCl when there is not bright sunshine (*i.e.,* at night or on cloudy days).

Response: The widely accepted fact that chlorine is photolyzed in sunlight formed the basis for the assumption in the original risk assessment that chronic exposure to chlorine would not occur. As a result of this comment, we re-examined the literature on the atmospheric fate of chlorine to validate our original assumption.

The additional information obtained from the literature confirmed our earlier information. There are several different pathways that molecular chlorine can take, including photolysis (reaction with light), reactions with hydroxyl radicals, reactions with oxygen atoms, and reactions with water vapor. Each pathway results in different amounts of Cl_2 being removed from the troposphere, and different pathways are predominant at different times of the day. However, photolysis is the primary pathway.

Therefore, this information did not fundamentally change the assumption made in the original risk assessment, which was that on a long-term basis, individuals will be exposed more to HCl formed from the photolysis of chlorine than to chlorine. However, the commenters are correct that there will be situations where individuals will be exposed to chlorine. Therefore, in addition to the assessment where we considered only acute exposure to chlorine, we concluded that it was appropriate to consider the effects of chronic exposure to chlorine emissions from chlor-alkali plants. In order to provide an upper bound estimate of the chronic risks to compare with the lower bound estimates assuming that all chlorine was converted to HCl, we conducted modeling assuming that no chlorine is photolyzed.

In general, we consider an exposure concentration which is below the RfC concentration (what we call a hazard quotient of less than 1) to be ''safe.'' This is based on the definition of RfC. The RfC is a peer reviewed value defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily inhalation exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious noncancer effects during a lifetime (*i.e.,* 70 years).

As discussed above, we conducted additional modeling for major source facilities within the subcategory using the same model used for the proposed action (ISCST3) to estimate chronic chlorine exposure using the assumption that no chlorine is photolyzed to HCl. The hazard quotients resulting from this additional modeling defined the upper bound of our risk assessment. The highest upper-bound hazard quotient estimated by the model is just over 0.3. (For more details regarding this revised risk assessment, refer to table 2 of the responses to comment document, available in the docket.) Given the health protective assumptions used in

this analysis, the value of 0.3 represents a hypothetical exposure that is well above what we would expect actual exposures to be. This is because chlorine is converted to HCl in the presence of sunlight within a few minutes. In addition, the hazard quotient of 0.3, which results from this exposure scenario is well below the safe value of 1. Thus, we have concluded that, even assuming that some chronic exposure to chlorine may occur, that none of the major sources included in this subcategory will have emissions of chlorine or HCl that exceed a level of exposure which is adequate to protect public health and the environment with an ample margin of safety.

Comment: Two commenters did not support EPA's use of the AEGL2 for use as a short-term exposure limit for chlorine and HCl. One commenter stated that the AEGL2 values would not sufficiently protect public health because they would allow emissions at levels that cause ''discomfort,'' and according to the commenter, discomfort is an adverse health effect. The commenter also complained that EPA did not explain why it chose to use AEGL2 rather than AEGL1 or AEGL3. The commenter explained that although emissions from chlorine plants did not exceed AEGL2 values, the emissions may exceed AEGL1 values, and if they did, the proposed action would not meet the statutory requirements. Another commenter stated that AEGL limits are not appropriate for assessing daily human exposure scenarios because they were developed for emergency planning. The commenter recommended that EPA use the American Conference of Governmental Industrial Hygienists (ACGIH), which has a 1-hour Short Term Exposure Limit (STEL) similar to the AEGL1 value of 1 part per million (ppm) for chlorine and is used to protect against eye and mucous membrane irritation. The commenter stressed that EPA must use conservative benchmarks before concluding that an ample margin of safety exists.

Response: The AEGL values represent short-term threshold or ceiling exposure values intended for the protection of the general public, including susceptible or sensitive individuals, but not hypersusceptible or hypersensitive individuals. The AEGL values represent biological reference values for this defined human population and consist of three biological endpoints for each of four different exposure periods of 30 minutes, l hour, 4 hours, and 8 hrs.

As utilized in the proposed action, the AEGL2 1-hour concentrations for chlorine and HCl are 5,800 $\mu g/m^3$ and 33,000 $\mu g/m^3$, respectively.

The 1-hour AEGL1 concentration for chlorine is 2,900 $\mu g/m^3$ and the corresponding value for HCl is 2,700 $\mu g/m^3$. The ACGIH short term exposure limit (STEL) for chlorine, which is 1 ppm is approximately equal to the AEGL1 value of 2,900 $\mu g/m^3$.

Although we stand by our original analysis, which used the AEGL2 level, we have incorporated the commentor's suggested use of the AEGL1 values (possibly with a safety factor) for determining whether an ample margin of safety has been obtained. Therefore, we simply compared the short term (1-hour average) modeling results from the original acute risk assessment to the AEGL1 values. These results were obtained by modeling the maximum allowable hourly emissions reported in the section 114 responses for each of the sources. For plants that did not report fugitive emissions, fugitive emissions were estimated using worst-case emission factors.

The maximum modeled 1-hour chlorine concentration for two of the three plants with the mercury cell chlor-alkali process is less than 5 percent of the AEGL1 (and ACGIH) value for chlorine. Further, the highest modeled concentration for any plant, 155 $\mu g/m^3$, is less than 6 percent of the AEGL1 values. The highest modeled 1-hour HCl concentration for any plant, 32 $\mu g/m^3$, is less than 2 percent of the AEGL1 value for HCl. Furthermore, all of the mercury cell chlor-alkali facilities also produce chlorine using a non-mercury chlorine production process (*i.e.*, diaphragm cells). The modeled emissions represent chlorine and HCl emissions from both processes. Therefore, the chlorine and HCl emissions from the mercury cell chlor-alkali process would be even lower.

Based on this comparison, we conclude that the chlorine and HCl emissions from mercury cell chlor-alkali production plants do not represent an unsafe level of acute exposure. We further maintain that, along with the chlorine exposure assessment, this proves that an ample margin of safety is provided with no additional control.

Comment: Two commenters supported EPA's method of selecting a risk assessment approach to meet the unique needs of the chlorine production industry. The commenters agreed that the risk assessment methodology should not be interpreted as a standardized approach that would set a precedent for how EPA will apply CAA section 112(d)(4) in future cases. Furthermore, the commenters stated that the degree of conservatism built into all aspects of the risk assessment conducted for the chlorine production source category could vary greatly in future risk assessments for other source categories. The commenters stressed that the conservative assumptions made in the health effects assessment, emissions estimates, and exposure assessment were appropriate for the proposed action.

In contrast, one commenter stated that the risk assessment fell short of the Agency's prior practice. According to the commenter, whenever EPA has made determinations to regulate a specific pollutant based on health considerations (*e.g.*, national ambient air quality standards (NAAQS) for ozone and PM), the Agency evaluated health effects and exposure in great detail. The commenter contended that in this case, EPA appears to be content with ''the bare and unsupported assumptions about what health levels are safe.'' The commenter argued that it was not appropriate for EPA to use a rigorous approach when setting standards and a more cursory approach when making a decision not to regulate.

Response: We disagree with the one commenter's characterization of the assessment that forms the basis for this decision, and we strongly dispute the characterization of the assessment as ''bare and unsupported.'' As discussed elsewhere in this preamble, we maintain that the RfC and AEGL values used as benchmarks for this assessment are scientifically sound and appropriate. The emissions data and other inputs used for this analysis, which were provided by the industry and checked by our staff, are representative of the industry.

In this assessment, the predicted health effects estimated, using very conservative inputs and assumptions, were well below the recognized health thresholds. While our approach in this particular action may not be the same as an approach for a NAAQS, we believe that it has been certainly more than ''cursory.'' We have looked at emissions and exposure data for each of the major sources in the subcategory. We have established hazard indices for chlorine and HCl for each major source in the subcategory. We performed a qualitative ecological assessment. Moreover, in response to comment received, we have revised our analyses and taken into account comments that we have received when performing these reassessments. We will base each risk assessment for this and future regulatory action on sound scientific principles.

Comment: In the proposed action, the risk assessment modeling was conducted by placing receptors at the

geographic center of census blocks within 2 kilometers of the site and in the population-weighted centers of census block groups or census tracks out to 50 kilometers. Two commenters did not agree with this methodology for determining receptor location for threshold pollutants. One commenter stated that EPA's methodology would be more appropriate for cancer causing agent, where the risk is based on probabilities of health effects. The commenter argued that for noncancer (*i.e.*, threshold pollutants) compounds, placing the receptors at the center of census tracks would not properly identify the highest impacts close to the facility. They felt that it was more appropriate to measure the exposure of the most exposed individual (*e.g.*, someone living at the fence line of a facility or directly downwind).

Response: We certainly agree with the commenters that the greatest impacts will likely occur near the facility for this source subcategory. However, we do not agree with the commenters that our approach fails to meet statutory requirements. We do not feel that considering an ''ample margin of safety'' means that we must demonstrate no risk or adverse health effects for a theoretical person living at the fence line. Rather, it is appropriate to assess the risks at locations where people most likely reside. A census block is the smallest geographic unit for which the Census Bureau tabulates 100 percent data. While census blocks in rural areas may be larger, many blocks correspond to individual city blocks in more populated areas. The commenter is correct in that an individual could live closer to the plant than the center of the census block and our approach would have slightly underestimated risk. It is just as likely, however, that the closest individual could live farther from the plant than the center of the census block causing our risk estimates to be slightly overestimated. By placing receptors at the center of populated census blocks on all sides of a facility, we have evaluated people living ''downwind.'' In conclusion, we continue to feel that placing a receptor in the geographic center of populated census blocks near a facility is a well established approach to exposure modeling which results in a reasonable approximation of estimating the risks where people actually live, and we maintain that this methodology is appropriate for actions taken under the authority of section 112(d)(4).

Comment: One commenter stated that all chlorine emissions from chlorine production facilities that are collocated with other source categories need to be reviewed as a whole when evaluating public health risk, adverse environmental effects, and possible control strategies. The commenter stressed that other sources of chlorine and HCl should be included in the risk assessment under section 112(d)(4). The commenter was concerned that not accounting for all chlorine and HCl emissions from a facility would provide the community with a false sense of assurance of protection and is not consistent with the legislative intent of the CAA to consider cumulative HAP exposure issues through an integrated approach under section 112(d), 112(f), and 112(k). Therefore, the commenter requested that EPA evaluate the potential for adverse health and environmental impacts using conservative risk assessment methodology that incorporates all known chlorine and HCl emissions from a contiguous facility.

Response: Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. In directing us how to establish MACT emission limits, section 112(d)(3) of the CAA requires us to set the emission limitation at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. Therefore, the entire MACT program is structured on a source category-specific basis. All MACT standards developed to date have addressed emissions from specific source categories.

There are instances where mercury cell chlor-alkali facilities are collocated with other source categories. However, based on the risk assessment for chlorine and HCl emissions from mercury cell chlor-alkali plants, the predicted impacts from chlorine and HCl at these plants are extremely low. We believe that the human health and environmental impacts from all sources in the subcategory even when collocated with other chlorine and HCl emissions will still be within an ample margin of safety to protect the public health, and will not cause adverse environmental effects. Moreover, as indicated in the preamble to the proposed action, most major processes at the sites where mercury cell chlor-alkali facilities are located are subject to, or will be subject to, NESHAP to reduce HAP emissions (67 FR 44714, July 3, 2002). Therefore, it would be inappropriate to include emissions from those sources in an assessment for the mercury cell chlor-alkali subcategory conducted under the authority of section 112(d)(4).

Comment: Two commenters stated that the environmental effects analysis was not adequate. One commenter stated that potential ecological effects of HCl emissions have not been properly referenced. One commenter stated that EPA's proposed action falls short of its obligation to protect against environmental effects. According to the commenter, EPA has understated its statutory obligation in the proposed action. The commenter referred to the legislative history, which indicates that CAA section 112(d)(4) requires standards that ''would not result in adverse environmental effects which would otherwise be reduced or eliminated.'' The commenter listed the several shortcomings in the EPA's environmental assessment.

The commenter concluded that although EPA acknowledged that it had an obligation to ensure that any standards set under section 112(d)(4) did not have any adverse environmental effects, the Agency did not properly consider the issue. Therefore, the commenter stated that EPA could not promulgate standards under section 112(d)(4) without contravening the CAA.

Response: While CAA section 112(d)(4) makes no mention of environmental effects, we took the potential of such adverse effects into account when we issued our proposed action. The level of our analysis at proposal was adequate to satisfy the requirements of section 112(d)(4). The commenters did not suggest that they believed there was the potential for adverse environmental effects from HCl or chlorine emissions from mercury cell chlor-alkali plants. Were there any evidence that such adverse effects were likely, or even possible, we would have conducted a more intensive ecological risk assessment.

The commenters are correct, however, that we did not discuss the ecological effects of chlorine. This was because, as was stated in the proposal preamble, we did not perform a separate evaluation of chronic chlorine exposure because chlorine is converted to HCl in the atmosphere so rapidly.

Atmospheric exposure is the primary pathway for environmental effects from chlorine emissions. However, since most chlorine is converted to HCl, studies have focused on the effects of HCl on vegetation. Although plant exposures to elevated levels of chlorine can cause plant injury, it tends to be converted to other, less toxic forms rather rapidly in plants and may not result in the direct accumulation of

toxic pollutant residuals important in the food chain.

Plant studies have found foliar damage due to chlorine emissions, decreased levels of chlorphyll a and b, decreased leaf areas, obvious chlorosis, and a decline in fruit production due to chlorine emissions.

There is evidence of effects to animals due to accidental and/or catastophic exposures, but the chlorine concentrations of these exposures are unknown. However, there are no data on exposure to historic or atmospheric concentrations.

More information is available on the effects of chlorine from aquatic exposures. However, there is no evidence that suggests that emissions of chlorine from industrial sources in the air contribute significantly to aquatic concentrations of chlorine.

One study reported a significant decrease in phytoplankton activity following exposure to 0.1 ppm chlorine in cooling tower water. Additional laboratory studies showed that continuous exposure to 0.002 milligrams per liter (mg/L) total residual chlorine (TRC) resulted in depressed algal biomass in naturally-derived microcosms.

When exposed continuously for 96 hours to 0.05 mg/L TRC, the Eurasian water milfoil showed a significant reduction in shoot and dry weights, shoot length, and chlorophyll content.

Aquatic invertebrates are very sensitive to chlorine and reaction products of chlorine, with early life stages showing the most sensitivity. For example, free chlorine, monochloramine, and dichloroamine have been shown to reduce the rate of oyster larvae survival. Many studies have been performed, and the results are highly variable depending on the chlorine species, the lifestage of the invertebrate, and other factors such as salinity. The most sensitive aquatic species appears to be molluscan larvae, with lethal concentration 50% (LC_{50}) of 0.005 mg/L. Sublethal effects have also been studied, including reduced growth, reduced motility, and reproductive failure.

The effects on fish also vary depending on the life stage and fish species and environmental factors, such as the pH, temperature, and type of chlorine species. Larval stages are more susceptible to effects, and freshwater species are more sensitive than marine species. Free chlorine is generally more toxic than residual chlorine; where the form of chlorine is dependent on the pH of the water. Sublethal effects such as avoidance, reduction of diversity in chlorinated effluents, reduction or elimination of spawning, abnormal larvae, reduced oxygen consumption, and gill damage have been noted. Many LC_{50} values were reported, ranging from 0.08 mg/L after 24 hours of exposure to TRC to 2.4 mg/L after 0.5 hours of exposure to TRC.

Acute and chronic exposures to predicted chlorine and HCl concentrations around the sources are not expected to result in adverse toxicity effects. These pollutants are not persistent in the environment. The chlorine and HCl emitted should not significantly contribute to aquatic chlorine concentrations and are not likely to accumulate in the soil. Chlorine rapidly converts to HCl in the atmosphere, and chlorine and HCl are not believed to result in biomagnification or bioaccumulation in the environment. Therefore, we do not feel there will be adverse ecological effects due to chlorine and HCl emissions from mercury cell chlor-alkali plants.

C. What Issues Were Raised Regarding the Compliance Date?

Comment: Commenters requested an extension of the compliance date, which was proposed to be 2 years from the effective date of the final rule. The commenters recommended that the compliance date should be changed to 3 years after promulgation. The commenters stated that affected facilities are being required to install costly, complex control and monitoring equipment, as well as establish additional operating and maintenance procedures at their facilities in order to ensure compliance with the emission limitations and work practice requirements of the proposed rule. The commenters believed that 2 years was not a sufficient period of time to complete such tasks, specifically the continuous monitoring requirements.

Response: We agree that since the existing sources are required to install complex monitoring equipment and to establish additional operating and maintenance procedures, it is reasonable to allow more time than the proposed 2-year compliance period. Section 63.6(c)(1) of the NESHAP General Provisions states that ''* * * in no case will the compliance date * * * exceed 3 years after the effective date of * * *.'' Therefore, the final rule specifies that the compliance date for existing sources is 3 years after the effective date of the final rule.

D. What Issues Were Raised Regarding the Emission Limitations?

Comment: One commenter, which submitted comments after the close of the comment period, recommended that EPA re-define MACT to ban the use of mercury cell technology. The commenter explained that this would be easily achievable because the majority of the chlorine production industry already uses other, superior technologies such as membrane cells and diaphragm cells. The commenter claimed that EPA abused its authority to establish subcategories of emission sources by creating a subcategory of ''mercury cell chlor-alkali plants'' within the chlorine production source category which limits the pool of facilities upon which the MACT floor is based to those who create dangerous pollution, as opposed to those industry leaders that use non-polluting and readily available equipment.

The commenter further listed a lack of confidence that the mercury cell process could be adequately controlled. The commenter explained that the work practice requirements which are proposed to address fugitive emissions, the largest source of emissions from this process, are too weak.

Finally, the commenter stated that converting all mercury cell plants to membrane cells would still be cost-effective, and that their estimate of the cost to convert all mercury cell plants to other technologies ($920 million) was justifiable given the significant threat to public health and the environment posed by mercury.

Response: We disagree with the commenter that we abused our authority to create subcategories by subcategorizing the chlorine production industry and only including mercury cell plants in the MACT floor analysis. It is our general policy to subcategorize when there are technical distinctions among classes, types, or sizes of sources, and manufacturing processes of sources, that would impact setting an appropriate emission limit even when creating the subcategories leads to some with a small number of sources. This policy is supported by the broad discretion provided to the Agency to establish subcategories under CAA section 112(c), the legislative history, and EPA's prior rulemakings.

In general, EPA has previously taken the position that subcategorization is appropriate where types of emissions and/or types of operation make use of the same air pollution control technology infeasible. The EPA's rulemakings reflect this general understanding and provide criteria for subcategorization that focus on the appropriateness of applying similar technology-based requirements at different sources.

The EPA feels that the subcategorization scheme it has used for this category of sources (as described above and in the proposed rule) is consistent with the statute, the legislative history, and EPA's past implementation of section 112(c) and the MACT program. The HAP emitted by the two subcategories (mercury cell chlor-alkali plants and non-mercury cell chlorine production) plants are different—while plants in both categories emit chlorine and HCl, only plants in the mercury cell subcategory emit mercury. The processes used to produce chlorine that the plants in the two subcategories used are generally different (because of the use of the mercury cells). Thus, no change was made in response to this comment and the final rule does not ban mercury cells (except the final rule does prohibit the emission of mercury from new or reconstructed chlor-alkali production facility sources).

With regard to the cost effectiveness of a ban of mercury cell chlor-alkali facilities, the commenter did not provide any basis for their estimate so we could not verify these costs. Further, we do not feel that ''conversion'' accurately describes the replacement of a mercury cell plant to another technology. There is little salvageable from a mercury cell plant that can be used in the construction of a membrane cell plant, so the demolition of the mercury cell plant followed by the construction of a membrane cell plant is a more accurate characterization.

Therefore, we did not promulgate a final rule that requires non-mercury technology for chlorine production.

Comment: Two commenters did not agree with the proposed ''beyond-the-floor'' emission limitations. They stated that there is no justification for EPA to set emission limits beyond the floor, as proposed. The commenters stressed that EPA is required to assess the cost-benefit relationship when considering ''beyond the MACT floor'' limitations. According to the commenters, the Agency did not set forth an accurate basis for costs associated with meeting the MACT floor or cost/benefits associated with meeting the ''beyond the MACT floor'' emission limitations.

These commenters were also concerned that the very low emission limits required by EPA's beyond-the-floor determination cannot be obtained by the industry as a whole. Specifically, the commenters stated that the Agency lacks high quality point source emission data upon which to base their ''beyond-the-floor'' limits. The commenters pointed out that the mercury emission limitations for hydrogen vent gas streams are based on limited data provided by a single facility in Maine that has been closed for nearly 2 years. The commenters maintained that for all of the eleven plants combined (ten affected plants plus the closed Maine plant), there was very little high quality point source emission data. Due to the significant chance that the data used to develop the standard are biased and quantitatively non-representative, the commenters stated that the Agency was not justified in moving beyond the floor to the most stringent value ever obtained by the industry.

The commenters further argued that EPA's conclusion that the ''beyond-the-floor'' emission limitations can be met with existing, commercially available control equipment is not supported and thereby seriously flawed. The commenters pointed out that EPA presented no data in the preamble or elsewhere in support of their decision that the proposed standards could be met with commercially available control systems.

Response: First, we disagree with the commenters' assertions that we did not have justification for going beyond the floor, and that we did not have an accurate basis for costs associated with meeting the MACT floor or meeting beyond-the-floor emission limitations. We conducted a very detailed plant-specific cost impacts analysis which is available in the docket. The commenters did not provide any specific comments on this detailed analysis or any specific data or rationale to refute our cost analysis. Therefore, we stand by our original analysis and have not made any changes to the cost impacts approach. Based on our analysis, we concluded that the costs/benefits of going beyond the floor are warranted. Given the persistent nature of mercury in the environment and its associated health and welfare impacts, we continue to feel that the additional emission reductions that will be achieved by the beyond-the-floor option are warranted considering the associated costs.

However, in the proposal preamble (67 FR 44682), we acknowledged that there was uncertainty associated with the level of control associated with the beyond-the-floor option proposed because the molecular sieve adsorption control technology is no longer commercially available, and because the plant representing this level of control is no longer operating. We did not receive any comments indicating that the molecular sieve control technology is commercially available. Further, since the plant has closed, we were unable to obtain additional information to further scrutinize the data to ensure that they were not biased and quantitatively non-representative. Therefore, we have concluded that we cannot fully demonstrate that the proposed beyond-the-floor standard is achievable using commercially available technology.

In the proposal preamble, however, we also stated that we were retaining the option of setting the standard at the next lowest normalized emission value of 0.076g Hg/Mg Cl_2 for plants with end box ventilation systems. The plant with this emissions level controls its by-product hydrogen system with a series of iodine and potassium iodide impregnated carbon adsorbers, and their end box ventilation system vent with a condenser and demister, which are commercially available technologies. Further, in the documentation for the proposed standard, we determined on a plant-specific basis which commercially available technologies could be made to comply with the proposed standard. The commenters provided no comment on why the application of the very specific application of these technologies could not achieve the emission limitations.

The emissions estimates for the facility with normalized emissions of 0.076 g Hg/Mg Cl_2 are based on weekly testing using methods that are modifications of EPA Methods 101A and 102. The primary difference between the methods used by the facility and the EPA Reference Methods is that the sampling is not isokinetic. We discussed our opinion that data obtained using this type of modified method were acceptable to use in MACT standards in the proposal BID. Therefore, it can be considered that the emission estimates used to establish the level of 0.076 grams Hg/Mg Cl_2 are based on weekly performance tests. We do not consider such data to be of low quality. Therefore for the final rule, we have selected the 0.076 grams Hg/Mg Cl_2 beyond-the-floor option as MACT for plants with end box ventilation systems.

For the by-product hydrogen stream for plants without end box ventilation systems and mercury thermal recovery unit vents, there were no questions raised regarding the availability of the control techniques used at the lowest emitting plants that formed the basis for the proposed emission limitations. Further, at proposal, we examined the data used to establish the emission limitations and determined that they were of adequate quality to be used to establish standards. Therefore, the final rule retains the proposed emission limitations for these emission sources.

Comment: Commenters were concerned that the proposed mercury

emission limitation for by-product hydrogen had a daily averaging period for continuous compliance. According to the commenters, the Agency developed the proposed standard using annual average emissions and actual annual production and then interpolated to a daily limit without regard to statistical error. Therefore, the commenters requested either an annual average emission rate limit or that the daily limit be set at not less than two times the annual limit divided by 365 (days).

Response: The commenters are correct in that the normalized mercury emissions used to establish the standards were based on annual average emissions and annual actual chlorine production. Therefore, the commenters' concerns about the variability of the control systems over a year and the ability to comply on a daily basis with this limit have merit. We considered the two options offered by the commenters (a 365-day compliance period and adjustments to account for daily variations).

We do not feel that it would be appropriate to apply a generic multiplier to the limit for mercury cell chlor-alkali plants to account for short-term variation. In addition, mercury cell emissions data were not available to assess the variability in emissions from these emission points. Therefore, we concluded that the emission limitation should reflect an annual average. This would be consistent with the data used to create the emission limitation and would allow for short-term variations in operations and control device performance.

The final rule is allowing weekly monitoring/testing as an alternative method to determine continuous compliance with the emission limitations. In order to be consistent with the continuous compliance approach, we concluded that the by-product hydrogen/end box ventilation emission limitation in the final rule should be annualized on a 52-week rolling basis. Specifically, the final rule requires that mercury emissions from all by-product hydrogen streams and end box ventilation system vents not exceed 0.076 grams Hg/Mg Cl_2 for any consecutive 52-week period.

E. What Issues Were Raised Regarding the Work Practices?

Comment: One commenter recommended that EPA establish numerical standards for fugitive emissions. The commenter maintained that, absent published information on good mass balance analyses performed at chlor-alkali facilities, one can only assume that significant mercury losses are occurring through fugitive emissions. Accordingly, the commenter felt it is crucial that the EPA step up efforts to address all potential release routes from such facilities, including fugitive emissions.

Another commenter, which submitted comments after the close of the comment period, expressed the view that the mercury consumed cannot be accounted for in material balances. This commenter asserted that the proposed rule failed to address the majority of the true annual mercury emissions from the mercury cell chlor-alkali industry. The commenter explained that the mercury used in this industry is not incorporated into final products or consumed in the process, so all mercury purchased is used to replenish mercury that has been lost from the manufacturing process. The commenter compared the amount of mercury purchased by the industry in 1994 (136 tons) to EPA's estimate of annual emissions (22,200 pounds or 11.1 tons) and concluded that the proposed rule fails to account for nearly 90 percent of the true mercury emissions from this industry. The commenter drew this conclusion based on the assumption that most of the mercury would be released to the air rather than transferred off-site as solid waste or accumulated in on-site tanks and ponds. The commenter noted that EPA's estimate of annual emissions was based on outdated and inadequate estimates of fugitive emissions which were based on short-term measurements taken when fugitive emissions were non-representatively low.

One of these commenters, who submitted comments after the comment period, recommended that EPA require both monitoring of fugitive emissions from cell rooms and waste storage areas and establish a reduction goal for such emissions. According to the commenter, technologies are available to quantify airborne mercury concentrations continuously, and in combination with estimates of air flow rates, estimates of fugitive loss rates under selected conditions could be made and could serve as the basis for reduction targets.

Response: The issue of unaccounted for mercury has been the subject of intense scrutiny from other groups within EPA and the indusry. As part of the Great Lakes Binational Toxics Strategy, mercury cell chlorine producers annually report the total mercury consumption for the industry. From the baseline consumption of 160 tons per year (tpy) for the years 1990–1995, the industry reported an 81 percent reduction of mercury consumed in 2001 (30 tpy). One of the commenters characterized the 2001 consumption as an outlier, but the 79 tpy consumed in 2000 still represents a significant decrease from the baseline level.

Even with this decrease in consumption, significant mercury remains unaccounted for by the industry. The mercury releases reported to the air, water, and solid wastes in the 2000 Toxics Release Inventory (TRI) totaled around 14 tons. This leaves around 65 tons of consumed mercury that is not accounted for in the year 2000.

While it may appear to the commenters that the discrepancy in the mercury material balance is the result of fugitive emissions, there is little empirical evidence to support this conclusion. The commenters did not provide any emissions data to support their assertion. Furthermore, industry personnel claim that mercury which condenses and accumulates in pipes, tanks, and other plant equipment makes up a large component of the unaccounted for mercury. While the commenters completely discount this claim by the industry, it is relevant to consider the very high density of mercury. For instance, the 65 tons of unaccounted for mercury in 2000 averages just over 7 tons per plant. One gallon of mercury weighs around 113 pounds, meaning that around 124 gallons of mercury would be unaccounted for per plant. This is a very small percentage (less than 2 percent) of the amount of mercury typically on site at most facilities. However, the industry is also unable to fully substantiate their theory. Therefore, the fate of all the mercury consumed at mercury cell chlor-alkali plants remains somewhat of an enigma.

We agree that work practice standards should only be set when it is not feasible to prescribe or enforce an emission standard. Indeed, our reasons for establishing work practices instead of numerical limits are based on factors associated with the practicality and feasibility of setting a realistic limit against which compliance can be measured and enforced.

First, data are not available to establish a numerical emission standard for fugitive emissions. As stated in the proposal preamble (67 FR 44680), emissions data for fugitives from cell rooms and waste storage areas are very limited. Second, we do not agree with the commenter's implication that available measurement technologies could support enforcing a numerical emission standard for the following reasons:

- Mercury emission monitors have not been used to monitor fugitive

emissions at mercury chlor-alkali facilities for compliance demonstrations;

- The variability in the number of and location of exhaust vents at each facility affects the amount of air moved through the cell rooms and thus affects the mass emission rate of the fugitives; and
- The variability of the cell room roof configuration affects the feasibility of using the continuous emissions monitors at each facility.

Therefore, the establishment of numerical emission limitations for fugitive emissions from the cell room and other areas is ''not feasible,'' as defined in CAA section 112(h)(2)(B). Thus, the final rule retains the work practice elements of the proposed rule.

However, in response to the concerns about unaccounted for mercury, we did add a provision in the final rule that requires each facility to record and report the mercury consumed each year. While there are no mercury consumption reduction targets in the final rule, we believe that reporting mercury consumption on a plant-specific basis will encourage additional action to identify unaccounted for mercury and reduce mercury consumption.

Comment: A commenter that submitted comments well after the close of the comment period expressed the opinion that there was a fundamental flaw in the proposed rule because the proposal will weaken existing sources' obligations to limit mercury emissions from the cell room. They cited 42 U.S.C. § 7412(d)(7), which prohibits emission standards from weakening existing standards. This commenter summarized the 40 CFR part 61 mercury NESHAP, which requires mercury cell chlor-alkali plants to not emit more than 2,300 grams per day of mercury from the entire facility, including the cell room, the by-product hydrogen streams, the end box ventilation system vents, and other sources of mercury. The commenter stated that even if emissions from all other points were zero, emission from the cell room cannot exceed 2,300 grams per day. The commenter acknowledged that an owner or operator may forego cell room emission testing and assume that cell room emissions are 1,300 grams/day, but pointed out that complying with these work practices does not absolve the owner or operator of the obligation to meet the applicable numeric emission standard.

The commenter contrasted this with the proposed rule, which established numerical emission standards for by-product hydrogen streams, end box ventilation systems, and mercury thermal recovery unit vents, but not for cell room fugitive emissions. The commenter claimed that emissions from the cell room will be able to exceed 2,300 grams/day so long as the work practices are followed, when the rule as proposed prohibits such a result.

The commenter concluded that it is not sufficient to say that the work practices that have been proposed are more stringent than the existing requirements, because neither the existing nor proposed work practices by themselves require any given numeric level to be achieved. They argued that the existing numeric limit provides EPA and the public with an enforceable limit of performance to which owners and operators can be held. The commenter went on to indicate that such a numerical standard is particularly necessary, as plants are currently emitting far more than 2,300 grams per day of mercury. To support this assertion, the commenter provided information indicating that mercury cell plants add much more mercury to their cells than 2,300 grams per day, and they concluded that cell room emissions is a very likely way that mercury is lost. In conclusion, the commenter stated that it would be inappropriate for EPA to rely entirely on a work practice standard and eliminate stricter provisions that would enable the Agency to insist that facilities keep their emissions below a set level.

Response: The 40 CFR part 61, Mercury NESHAP, § 61.53(c)(1), contains requirements for stack sampling to determine emission levels for cell room ventilation systems at mercury chlor-alkali plants. If an owner or operator meets the prescribed work practice standards, they can assume a mercury emission rate from the cell room of 1,300 grams per day.

While the final rule does not retain the numerical emission limitation from the 40 CFR part 61 Mercury NESHAP, the requirements in the final rule for fugitive mercury emissions from the cell room are far more stringent than the design, maintenance, and housekeeping practices allowed by the Mercury NESHAP in lieu of meeting the numerical limit. In addition, the Mercury NESHAP contained only 18 work practice requirements as compared to the more than 80 design, operation, maintenance, inspection, and required actions for repair contained in tables 1 through 4 to the final rule. The work practice standards specify the equipment and areas to be inspected along with the frequency of the inspections and conditions that trigger corrective action. Response time intervals for when the corrective actions must occur are also specified. Furthermore, some types of inspections are required at more frequent intervals than required by the Mercury NESHAP (*e.g.*, inspecting decomposers for hydrogen leaks twice per day rather than once each day). In addition, the detailed recordkeeping procedures and reporting provisions are more fully developed than those in the Mercury NESHAP, as well as requirements for storage of mercury-containing wastes.

Finally, the work practice standards contain a requirement for owners and operators to develop and implement a plan for the routine washdown of accessible surfaces in the cell room and other areas. The standards establish the duty for owners or operators to prepare and implement a written plan for washdowns and specify elements to be addressed in the plan. A requirement for washdowns is an important part of an overall approach to reducing cell room fugitive emissions.

Along with a floor-level periodic mercury monitoring program (discussed later), not only will the work practice standards in the final rule result in reduced mercury fugitive emissions (and, therefore, mercury consumption), but provide much more enforceable provisions so that an inspector can verify that they are being met.

In addition, we have calculated emission reductions for the final rule. Assuming that every facility is complying with the 1,000 grams per day limit from point sources (this value assumes that 1,300 grams per day of the 2,300 grams per day facility limit are being used for fugitive emissions), we estimate that baseline emissions from all nine existing facilities (relative to the Mercury NESHAP) are 3,285 kg/yr. We estimate that annual emissions after the application of MACT to be 217 kg/yr. Therefore, the final rule will result in emission reductions of 3,068 kg/yr, or approximately 93 percent from the existing Mercury NESHAP. This supports our position that we are not setting a standard that allows backsliding. Therefore, once the final rule compliance date ensues, sources subject to the provisions of the final rule will no longer be subject to the Mercury NESHAP.

Comment: Commenters disagreed with EPA's proposal to institute a continuous mercury monitoring program whereby owners and operators would be required to continuously monitor mercury concentration in the upper portion of each cell room and take corrective actions when elevated mercury vapor levels are detected. The commenters stated that the proposed

monitoring program was seriously flawed and should be deleted from the final rule. The commenters noted that periodic monitoring done in various areas of the cell room (as currently practiced to ensure compliance with Occupational Health & Safety Administration (OSHA) permissible exposure limits) was an appropriate substitute. Several commenters stated that they would not be opposed to the continuous mercury monitoring program if the technology were field demonstrated.

In contrast, one commenter, which submitted comments after the close of the comment period, ''enthusiastically'' supported the proposed cell room monitoring program. Nonetheless, the commenter felt that it was unwise for the EPA to allow each owner/operator to set his/her own cell room action level.

Some commenters stated that cell room monitoring is redundant to the housekeeping requirements, and that the work practices required in Tables 1–5 to the proposed rule allow for sufficient opportunity to quickly detect abnormal sources of mercury emissions. Another commenter stated that the final rule should either require continuous monitoring or detailed work practice standards but not both. The commenter argued that cell room designs vary greatly. Given this variability, the commenter urged EPA to enable facilities to select the appropriate compliance strategy for individual circumstances.

Response: With regard to technical feasibility, a cell room mercury monitoring system was tested in 2000 at a mercury cell facility in Augusta, Georgia, that demonstrated that the monitoring technology can be effectively installed and operated in mercury cell chlor-alkali plant cell rooms, and this technology, along with other measures, can be an effective mechanism to identify leaking equipment and other problems that result in fugitive mercury emissions from the cell room.

We acknowledge that this success, which occurred in a limited and very controlled situation for a short time period, does not necessarily prove that similar monitoring at every mercury cell room would prove to be an effective long-term method to reduce mercury fugitive emissions. In fact, the design and operation of the Augusta facility probably represented the optimum circumstances for a mercury cell room monitoring program to be successful. We are aware that cell room designs vary greatly and recognize that the design affects the location and number of monitors necessary to accurately monitor each individual cell room. In addition, depending on the design of the roof, it may be possible that installation of monitors that adequately monitor mercury concentration would not even be possible.

Even with these limitations, a well designed and implemented cell room monitoring program can effectively reduce mercury fugitive emissions on a long-term basis. Therefore, we included this concept in the final rule.

However, we do agree with the commenters that a comprehensive continuous cell room monitoring program should be sufficient to reduce fugitive mercury emissions from the cell room without imposing the overlapping requirements of the detailed work practices. Therefore, we have concluded that it is appropriate to allow facilities to implement the continuous cell room monitoring program as an alternative to, and not in addition to, the work practice requirements. In the final rule, facilities are given the option to implement the cell room continuous monitoring program in lieu of the work practice requirements. We do, however, feel there is a need to outline more specifically the elements that must be included in the cell room monitoring program to ensure that it provides at least the same level of control as the work practices and cell room monitoring program would have provided together. Therefore, there are more prescriptive requirements in the final rule for the cell room monitoring plan option. The final rule dictates how the action level is to be established, what measures must be followed when the action level is exceeded, and what records must be kept.

Although the continuous cell room monitoring provisions are optional, some mercury monitoring to detect elevated mercury levels in the cell room is appropriate. Therefore, we have included a periodic monitoring program to be performed throughout the cell room as a substitute for continuous monitoring. The final rule contains a floor-level periodic monitoring program as part of the work practice standards.

F. What Issues Were Raised Regarding the Monitoring and Continuous Compliance Requirements?

Comment: Three commenters questioned EPA's intent in establishing emission limitations based on the initial performance test. These commenters felt that the proposed standards amounted to changing the emission limit based on the emissions observed during the performance test which amounted to ignoring the emission limit established through the rulemaking process. Two of the commenters stated that the amount of mercury emissions measured during the initial compliance performance test should be used only to verify compliance with the MACT standards, and not to establish new emission limits. The commenters were concerned that the emission limits would become floating limits based on the most recent performance test, as opposed to being MACT standards.

The commenters indicated that variations around the concentrations, above and below, measured during the performance test can be expected. Treatment systems employed to obtain compliance (*e.g.*, carbon) would be expected to show some slight deterioration after a period of operation. Therefore, a performance test conducted just after a carbon change would result in an unrealistically low operating limit. Finally, the commenters were concerned that different facilities would have different operating limits, depending on variables like the type of control equipment installed, the operating conditions on the day of the emission test (*i.e.*, mercury volatility changes significantly with temperature), and other factors. One commenter was concerned that, given the wide variability in emission constituents, operators would not be able to assure that their facilities will consistently emit within the limits established during an ideally controlled initial performance test.

Two of the commenters acknowledged that other MACT standards require the gathering of data for surrogate parameters (*e.g.*, scrubber liquor pH, scrubber liquor flow) when direct measurement of a control parameter is not required or feasible. These surrogate parameters are used to establish performance requirements for the control device. The commenters went on to say that in cases where performance requirements based on surrogate parameters were established during the performance test, the emission limitation was not modified to reflect the actual emissions experience during the test. However, the commenters stated that they felt that this is exactly what is required under the proposed rule.

One of the commenters argued that EPA's required installation of instruments directly in the vent stream to continuously monitor actual concentration of mercury and, therefore, actual mercury emissions, means that there is no need to rely on operating parameters which have been calculated for only one set of conditions.

One commenter was concerned about the cost-benefits of continuous

monitoring systems (CMS) in the by-product hydrogen, end box ventilation system, and mercury thermal recovery unit vent streams. According to the commenter, the types of control devices likely to be used for controlling mercury emissions from these streams (*i.e.,* carbon or molecular sieve units) have very good performance characteristics and are not likely to incur short-term upsets. The commenter noted that performance is subject to normal variations, and the ability of these systems to absorb mercury does degrade over time. The commenter stated that before emissions reach the permit limits due to reduced performance, the beds must be replaced. The commenter requested that in lieu of CMS, facilities should be allowed to rely on the known capability of the systems to operate reliably. The commenter stated that the Agency could delete the requirement for CMS without any real harm to the environment.

Response: In general, we disagree with the premise of the commenters' argument. The proposed rule would have required that continuous compliance for each vent be determined by monitoring mercury concentration as an operating limit. The measured concentrations would not have been used to compare directly with the emission limitations. Rather, they would have provided an indication that the control device was performing in a manner consistent with the operation during the initial performance test. Therefore, the proposed requirements to establish operating limits would have established emission limitations, or resulted in changing emission limits, based on the initial performance test.

However, we do acknowledge that there is a difference in a mercury concentration operating limit and an operating limit based on surrogate parameters because the mercury concentration is obviously a direct measure of mercury emissions. In fact, we agree with the point made by the one commenter that there is no need to rely on operating parameters when a direct measurement of emissions is being required.

As discussed at length in the proposal preamble (67 FR 44690), we considered requiring mercury continuous emission monitors (CEM) that would directly measure in units of the standard. Although monitoring that directly measures compliance is preferred, we decided to propose mercury concentration operating limits based on the uncertainties associated with the cost and reliability of the mercury monitoring devices. Commenters did not provide any information to alleviate these concerns. In fact, they shared our basic concerns even if the monitoring devices were only used for operating limits.

We weighed the comments related to the mercury concentration operating limits against the concerns associated with using mercury concentration monitors as CEM. Our preference continues to be to require mercury CEM. With sufficient evaluation, analysis, and refinement, the industry will find these devices acceptable. However, we could not require these devices in the final rule without a fallback alternative if sources found that these monitoring devices were not acceptable for use within the industry.

During the development of the proposed standards, we learned that many mercury cell chlor-alkali facilities conducted periodic (*e.g.,* weekly, monthly) tests to determine the mercury content in vent streams. This is done to assess control device performance or, for the by-product hydrogen stream, to ensure product quality. These tests are not typically conducted using EPA-approved test methods, but are usually conducted using modified methods. Since this periodic testing is already being conducted at many mercury cell plants, we evaluated whether a continuous compliance option could be included in the final rule based on such periodic testing. Since such testing directly measures mercury emissions, we concluded that it would be an acceptable alternative to mercury CEM. The only question was how often such testing would be needed to ensure continuous compliance with the emission limitations. Daily testing would certainly be adequate, but we were concerned about the costs and burden associated with 365 tests each year for each process vent.

The most common final control device is (or will be) nonregenerative carbon adsorption. These fixed bed carbon devices can operate for long periods of time before a carbon change is needed. The carbon replacement frequency is often more than a year. Weekly testing would be more than sufficient to represent the emissions for the entire week and to indicate when breakthrough (*i.e.,* the point at which the carbon has become saturated with mercury emissions) is approaching. Because breakthrough does not occur instantaneously, but is slowly approached over time, weekly testing is sufficient to detect the point at which breakthrough is approaching.

However, there is the possibility that non-carbon devices such as condensers, absorbers, or regenerative molecular sieves could be used as the final control device to comply with the emission limits in the final rule. Since improper operation of these devices could result in higher emissions for short periods, we had concerns about utilizing weekly testing for these devices. However, we concluded that if parametric monitoring of surrogate parameters (*e.g.,* condenser temperature) were conducted to ensure consistent and proper operation of these devices, weekly testing would be acceptable.

Therefore, the final rule includes two options for continuous compliance for the by-product hydrogen stream, the end box ventilation system vent, and the mercury thermal recovery unit vent. The first option is continuous emissions monitoring using a mercury continuous emissions monitoring system. The second is periodic testing using Method 101, 101A, or 102 or an approved alternative method. Specifically, this second option requires that at least three acceptable test runs be conducted each week. As part of the periodic testing option, if the final control device is not a nonregenerative carbon adsorber, surrogate parameter monitoring is required.

V. What Are the Environmental, Cost, and Economic Impacts of the Final Rule?

A. What Are the Air Emission Impacts?

The level of mercury emissions allowed by the Mercury NESHAP is 2,300 grams per day. If one assumes that all nine plants in the source category emit mercury at this level, and that each operates 365 days a year, total annual potential-to-emit baseline emissions would be 7,556 kg/yr (16,658 lb/yr). Annual potential-to-emit baseline emissions for fugitive emission sources would be 4,271 kg/yr (9,416 lb/yr), based on 1,300 grams per day assumed for each plant's cell room ventilation system when the 18 design, maintenance, and housekeeping practices referenced in the Mercury NESHAP are followed. Annual potential-to-emit baseline emissions for by-product hydrogen streams, end box ventilation system vents, and mercury thermal recovery unit vents would be 3,285 kg/yr (7,242 lb/yr), based on the remaining 1,000 grams per day allowed. We estimate that the final rule will reduce industrywide mercury emissions for by-product hydrogen streams, end box ventilation system vents, and mercury thermal recovery unit vents from this annual potential-to-emit baseline to around 217 kg/yr (478 lb/yr), which is equivalent to about 93 percent reduction.

While the level of mercury emissions allowed by the Mercury NESHAP defines the potential-to-emit baseline, the sum of annual mercury emission releases from by-product hydrogen streams, end box ventilation system vents, and mercury thermal recovery vents, as estimated by mercury cell chlor-alkali plants, defines an annual actual baseline for vents of about 800 kg/yr (1,764 lb/yr). We estimate that the final rule will reduce industrywide mercury emissions for vents from this annual actual baseline to around 217 kg/yr (478 lb/yr), which is equivalent to about 73 percent reduction.

We estimate that secondary air pollution emissions will result from the production of electricity required to operate new control devices and new monitoring equipment assumed for plant vents. Assuming electricity production as based entirely on coal combustion for a worst-case scenario, we estimated plant-specific impacts for sulfur dioxide, nitrogen oxides, particulate matter, and carbon monoxide emissions. The total estimated secondary air impacts of the final requirements for point sources at the nine mercury cell chlor-alkali plants is around 2.12 mg/yr (4.67 tpy) for all pollutants combined.

We are unable to quantify the primary air emission impacts associated with the final work practice standards, so no mercury emission reduction is assumed for fugitive emission sources. However, we feel strongly that the new and more explicit requirements contained in the final standards will in fact result in mercury emission reductions beyond baseline levels. Relative to secondary impacts, we expect that secondary air pollution emissions will result from the production of electricity required to operate new monitoring equipment assumed for plant cell rooms. We estimate the secondary air impacts of the final rule for fugitive emission sources to be 0.112 mg/yr (0.124 tpy).

B. What Are the Non-Air Health, Environmental, and Energy Impacts?

We do not expect that there will be any significant adverse non-air health impacts associated with the final standards for mercury-cell chlor-alkali plants.

We estimate that an increase in the amount of mercury-containing waters will result from the heightened use of packed tower scrubbing assumed for several plant vents. The total estimated water pollution impact of the final rule for point sources is about 1.5 million liters (404 thousand gallons) of additional wastewater per year. We estimate that an increase in the amount of mercury-containing solid wastes will result with the heightened use of carbon adsorption assumed for several plant vents. The total estimated solid waste impact of the final rule for point sources is about 8.8 mg/yr (9.7 tpy) of additional mercury-containing spent carbon.

We are unable to quantify non-air environmental impacts associated with the final work practice standards, so no wastewater and solid waste impacts are assumed for fugitive emission sources.

We estimate that the final requirements for point sources will result in increased energy consumption, specifically additional fan power in conveying gas streams through new carbon adsorbers and new packed scrubbers assumed for certain plant vents and additional power consumed by new vent monitoring equipment. The total estimated energy impacts of the final requirements for point sources is about 772 thousand kW-hr/yr.

We estimate that the final requirements for fugitive emission sources will result in increased energy consumption required to operate new monitoring equipment assumed for plant cell rooms. The total estimated energy impacts of the final requirements for fugitive emission sources is about 39 thousand kW-hr/yr.

C. What Are the Cost and Economic Impacts?

For projecting cost impacts of the final rule on the mercury cell chlor-alkali industry, we estimate that all nine plants will incur costs to meet the final work practice standards and the final monitoring, recordkeeping, and reporting requirements. We estimate that seven plants will incur costs to meet the final emission limits for by-product hydrogen streams and end box ventilation system vents, and two plants will incur costs to meet the final emission limits for mercury thermal recovery units. The total estimated capital cost of the final rule for the nine mercury cell chlor-alkali plants is around $1.6 million, and the total estimated annual cost is about $1.4 million per year. Plant-specific annual costs in our estimate range from about $130,000 for the least-impacted plant to about $260,000 for the worst-impacted plant.

The purpose of the economic impact analysis is to estimate the market response of chlor-alkali production facilities to the final standards and to determine the economic effects that may result due to the final NESHAP. Chlor-alkali production jointly creates both chlorine and caustic, usually sodium hydroxide, in fixed proportions. Being joint commodities, the economic analysis considers the impacts of the final NESHAP on both the chlorine and sodium hydroxide markets.

The chlor-alkali production source category contains 43 facilities, but only nine facilities using mercury cells are directly affected by the final standards. These nine facilities are located at nine plants that are owned by seven companies.

Chlor-alkali production in mercury cells leads to potential mercury emissions from hydrogen streams, end box ventilation system vents, mercury thermal recovery units, and fugitive emission sources. The compliance costs for the final standards, therefore, relate to the purchase, installation, operation, and maintenance of pollution control equipment at the point sources, as well as the labor costs and overheads associated with observing work practices addressing fugitive emissions. The estimated total annual costs for the final NESHAP are $1.8 million. This cost estimate represents about 0.30 percent of the 1997 chlorine sales revenue for the mercury cell chlor-alkali production facilities. Furthermore, the total annual costs represent less than 0.01 percent of the revenues of owning the directly affected mercury cell chlor-alkali plants.

The economic analysis predicts minimal changes in industry outputs and the market prices of chlorine and sodium hydroxide as a result of the estimated control costs. The new market equilibrium quantities of chlorine and sodium hydroxide decrease by less than 0.1 percent. Equilibrium prices of chlorine and sodium hydroxide both rise by less than 0.1 percent due to the final standards. Based on these estimates, we conclude that the final standards are not likely to have a significant economic impact on the chlorine production industry as a whole or on secondary markets such as the labor market and foreign trade.

We performed an economic analysis to determine facility- and company-specific impacts. These economic impacts are measured by calculating the ratio of the estimated annualized compliance costs of emissions control for each entity to its revenues (*i.e.,* cost-to-sales ratio). After the cost-to-sales ratio is calculated for each entity, it is then multiplied by 100 to convert the ratio into percentages. Actual revenues at the facility level are not available, therefore, estimated facility revenues received from the sale of chlorine are used. Some of these facilities also produce caustic as potassium hydroxide, but the revenues from the sale of this product are not estimated. The nine mercury cell chlor-alkali

plants have positive cost-to-sales ratios. The ratio of costs to estimated chlorine sales revenue for these facilities range from a low of 0.16 percent to a high of 1.00 percent. The average cost-to-sales ratio for the nine mercury process chlorine production facilities is 0.46 percent. More detailed economic analysis predicted minimal changes in chlorine production at each facility. Thus, overall, the economic impact of the final standards is minimal for the facilities producing chlorine.

The share of compliance costs to company sales are calculated to determine company level impacts. Since seven companies own the nine affected facilities, all seven firms face positive compliance costs from the final NESHAP. The ratio of costs to estimated revenues range from a low of less than 0.01 percent to a high of 0.22 percent, and the average ratio of costs to company revenues is 0.06 percent. Again, more detailed economic analysis at the company level predicts little change in company output or revenues. So, at the company level, the final standards are not anticipated to have a significant economic impact on companies that own and operate the chlorine production facilities.

No facility or company is expected to close as a result of the final standards, and the economic impacts to consumers are anticipated to be minimal. The generally small scale of the impacts suggests that there will also be no significant impacts on markets for the products made using chlorine or sodium hydroxide. For more information, consult the economic impact analysis report entitled ''Economic Impact Analysis for the Final Mercury Cell Chlor-Alkali Production NESHAP,'' which is available in the docket for this rulemaking.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

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

It has been determined that the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information requirements are not enforceable until OMB approves them.

The information requirements are based on notifications, records, and reports required by the General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

According to the ICR, the total 3-year monitoring, reporting, and recordkeeping burden for this collection is 6,692 labor hours, and the annual average burden is 2,231 labor hours. The total annualized cost of monitoring, reporting, and recordkeeping is approximately $628,212. The labor cost over the 3-year period is $295,928 or $98,643 per year. The annualized capital cost for monitoring equipment is $262,458. Annual operation and maintenance costs are $365,754 over 3 years, averaging $121,918 per year. This estimate includes a one-time plan for demonstrating compliance, annual compliance certificate reports, notifications, and recordkeeping.

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

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

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code, a maximum of 1,000 employees for the alkalies and chlorine manufacturing industry; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that two of the seven companies that own mercury chlor-alkali plants are small entities. Although small businesses represent 30 percent of the companies within the source category, they are expected to incur 18 percent of the total industry annual compliance costs. There are no companies with compliance costs equal to or greater than 1 percent of their sales. No firms are expected to close rather than incur the costs of compliance with the final rule.

Furthermore, firms are not projected to close their facilities due to the final rule.

Although the final rule will not have significant economic impact on a substantial number of small entities, we have nonetheless worked aggressively to minimize the impact of the final rule on small entities, consistent with our obligation under the CAA. The two companies have been active participants in the rulemaking process through their association with the industry trade organization, the Chlorine Institute. Therefore, we met with representatives of these small entities on numerous occasions. In addition, we conducted an extended visit to a mercury cell chlor-alkali plant owned by one of these companies to understand their process and emission control techniques, along with any unique impacts that might occur due to the fact that their company was a small entity. In general, the provisions of the rule were deigned to achieve the maximum emission reduction while also incorporating as many of the existing practices currently being employed by the industry. The input received from these small entities was duly considered in this evaluation.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The total annualized cost of the final rule has been estimated to be $1,390,000. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. The standards apply only to mercury cell chlor-alkali plants and do not pre-exempt States from adopting more stringent standards or otherwise regulate State or local governments. Thus, Executive Order 13132 does not apply to the final rule.

Although section 6 of Executive Order 13132 does not apply to the final rule, EPA did consult with State and local officials in developing the final rule. No concerns were raised by these officials during this consultation.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

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

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This is because no tribal governments own or operate a mercury cell chlor-alkali plant. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that we considered.

The final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section

5–501 of the Executive Order has the potential to influence the regulation.

As with most rulemakings developed under section 112(d) of the CAA, the final rule is based on MACT. Risks to public health and impacts on the environment are not typically considered in the development of emissions standards under section 112(d). Rather, these risks and impacts are considered later (within 8 years after promulgation of the MACT rule) under the residual risk program as required by section 112(f) of the CAA. While we do not believe the final rule to be ''economically significant,'' as defined under Executive Order 12866, we do believe that it addresses environmental health or safety risks that may have a disproportionate effect on children.

Mercury has been identified as a priority pollutant under EPA's National Agenda to Protect Children's Health from Environmental Threats and by the Federal Children's Health Protection Advisory Committee (CHPAC). The CHPAC was formed to advise, consult with, and make recommendations to EPA on issues associated with the development of regulations to address the prevention of adverse health effects to children. One of the CHPAC's primary missions was to identify five existing EPA regulations, which if reevaluated, could lead to better protection for children. The CHPAC recommended the Mercury NESHAP for chlor-alkali plants as one of the regulations to be reevaluated considering impacts on children. We adopted the CHPAC recommendation. Therefore, we considered the impacts on children in the development of the final rule. A qualitative assessment of the potential impacts on children's health due to mercury emissions from chlor-alkali plants was presented in the preamble to the proposed rule (67 FR 44693).

Because the final rule does not meet both criteria for applicability, it is not subject to Executive Order 13045. However, based on our assessment, the final rule will help reduce the mercury exposures to humans, including children.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites in the final rule EPA Methods 1, 1A, 2, 2A, 2C, 2D, 3, 3A, 3B, 4, 5, 101, 101A, 102, and any method to measure mercury (validated with EPA Method 301). Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, and 102. The search and review results have been documented and are placed in the docket (OAR–2002–0017 or A–2000–32) for the final rule.

This search for emissions monitoring procedures identified 14 voluntary consensus standards and five draft standards. The EPA determined that the 14 standards were impractical alternatives to EPA test methods for the purposes of this rulemaking. Therefore, EPA will not adopt these standards today. The reasons for this determination for these 14 standards are in the docket.

The 14 voluntary consensus standards are as follows: ASME C00031 or PTC 19–10–1981, ''Part 10 Flue and Exhaust Gas Analyses,'' for EPA Method 3; ASME PTC–38–80 R85 or C00049, ''Determination of the Concentration of Particulate Matter in Gas Streams,'' for EPA Method 5; ASTM D3154–91 (1995), ''Standard Method for Average Velocity in a Duct (Pitot Tube Method),'' for EPA Methods 1, 2, 2C, 3, 3B, and 4; ASTM D3464–96, ''Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer,'' for EPA Method 2; ASTM D3685/D3685M–98, ''Test Methods for Sampling and Determination of Particulate Matter in Stack Gases,'' for EPA Method 5; ASTM D3796–90 (1998), ''Standard Practice for Calibration of Type S Pitot Tubes,'' for EPA Method 2; ASTM D5835–95, ''Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration,'' for EPA Methods 3A; ASTM E337–84 (Reapproved 1996), ''Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures),'' for EPA Method 4; CAN/CSA Z223.1–M1977, ''Method for the Determination of Particulate Mass Flows in Enclosed Gas Streams,'' for EPA Method 5; CAN/CSA Z223.2–M86 (1986), ''Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams,'' for EPA Methods 3A; CAN/CSA Z223.26–M1987, ''Measurement of Total Mercury in Air Cold Vapour Atomic Absorption Spectrophotometeric Method,'' for EPA Methods 101 and 101A; ISO 9096:1992 (in review 2000), ''Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method,'' for EPA Method 5; ISO 10396:1993, ''Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations,'' for EPA Method 3A; ISO 10780:1994, ''Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts,'' for EPA Method 2.

The following five standards identified in this search were not available at the time the review was conducted for the purposes of this rulemaking because they are under development by a voluntary consensus body: ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ISO/DIS 12039, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Method 3A; PREN 13211 (1998), ''Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury,'' for EPA Methods 101, 101A (and mercury portion of EPA Method 29); and ASTM Z6590Z, ''Manual Method for Both Speciated and Elemental Mercury'' is a potential alternative for portions of EPA Methods 101A and Method 29 (mercury portion only).

Section 63.8232 of the final rule lists the EPA testing methods included in the final rule. Under 40 CFR 63.7(f) and 63.8(f), a source may apply to EPA for

permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective on December 19, 2003.

List of Subjects in 40 CFR Part 63

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

Dated: August 25, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

■ 2. Part 63 is amended by adding subpart IIIII to read as follows:

Subpart IIIII—National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants

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What This Subpart Covers

§ 63.8180 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for affected sources of mercury emissions at mercury cell chlor-alkali plants. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations and work practice standards in this subpart.

§ 63.8182 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a mercury cell chlor-alkali plant.

(b) You are required to obtain a title V permit, whether your affected source is a part of a major source of hazardous air pollutant (HAP) emissions or a part of an area source of HAP emissions. A major source of HAP is a source that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year. An area source of HAP is a source that has the potential to emit HAP but is not a major source. Nothing in this subpart revises how affected sources are aggregated for purposes of determining whether an affected source is a part of an area, nonmajor, or major source under any provisions of the Clean Air Act (CAA) or EPA's regulations. For information on aggregating affected sources to determine what is a source under title V, see the definition of major source in 40 CFR 70.2, 71.2 and 63.2.

(c) Beginning on December 19, 2006, the provisions of subpart E of 40 CFR part 61 that apply to mercury chlor-alkali plants, which are listed in paragraphs (c)(1) through (3) of this section, are no longer applicable.

(1) § 61.52(a);

(2) § 61.53(b) and (c); and

(3) § 61.55(b), (c) and (d).

§ 63.8184 What parts of my plant does this subpart cover?

(a) This subpart applies to each affected source at a plant site where chlorine and caustic are produced in mercury cells. This subpart applies to two types of affected sources: the mercury cell chlor-alkali production facility, as defined in paragraph (a)(1) of this section; and the mercury recovery facility, as defined in paragraph (a)(2) of this section.

(1) The mercury cell chlor-alkali production facility designates an affected source consisting of all cell rooms and ancillary operations used in the manufacture of product chlorine, product caustic, and by-product hydrogen at a plant site. This subpart covers mercury emissions from by-product hydrogen streams, end box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes.

(2) The mercury recovery facility designates an affected source consisting of all processes and associated operations needed for mercury recovery from wastes at a plant site. This subpart covers mercury emissions from mercury thermal recovery unit vents and fugitive emission sources associated with storage areas for mercury-containing wastes.

(b) An affected source at your mercury cell chlor-alkali plant is existing if you commenced construction of the affected source before July 3, 2002.

(c) A mercury recovery facility is a new affected source if you commence construction or reconstruction of the affected source after July 3, 2002. An affected source is reconstructed if it meets the definition of ''reconstruction'' in § 63.2.

§ 63.8186 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you no later than December 19, 2006.

(b) If you have a new or reconstructed mercury recovery facility and its initial startup date is on or before December 19, 2003, you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you by December 19, 2003.

(c) If you have a new or reconstructed mercury recovery facility and its initial startup date is after December 19, 2003, you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you upon initial startup.

(d) You must meet the notification and schedule requirements in § 63.8252. Several of these notifications must be submitted before the compliance date for your affected source(s).

Emission Limitations and Work Practice Standards

§ 63.8190 What emission limitations must I meet?

(a) *Emission limits.* You must meet each emission limit in paragraphs (a)(1) through (3) of this section that applies to you.

(1) New or reconstructed mercury cell chlor-alkali production facility. Emissions of mercury are prohibited from a new or reconstructed mercury cell chlor-alkali production facility.

(2) Existing mercury cell chlor-alkali production facility. During any consecutive 52-week period, you must not discharge to the atmosphere total mercury emissions in excess of the applicable limit in paragraph (a)(2)(i) or (ii) of this section calculated using the procedures in § 63.8243(a).

(i) 0.076 grams of mercury per megagram of chlorine produced (1.5×10^{-4} pounds of mercury per ton of chlorine produced) from all by-product hydrogen streams and all end box ventilation system vents when both types of emission points are present.

(ii) 0.033 grams of mercury per megagram of chlorine produced (6.59×10^{-5} pounds of mercury per ton of chlorine produced) from all by-product hydrogen streams when end box ventilation systems are not present.

(3) New, reconstructed, or existing mercury recovery facility. You must not discharge to the atmosphere mercury emissions in excess of the applicable limit in paragraph (a)(3)(i) or (ii) of this section.

(i) 23 milligrams per dry standard cubic meter from each oven type mercury thermal recovery unit vent.

(ii) 4 milligrams per dry standard cubic meter from each non-oven type mercury thermal recovery unit vent.

(b) [Reserved]

§ 63.8192 What work practice standards must I meet?

You must meet the work practice requirements specified in paragraphs (a) through (f) of this section. As an alternative to the requirements specified in paragraphs (a) through (d) of this section, you may choose to comply with paragraph (g) of this section.

(a) You must meet the work practice standards in Tables 1 through 4 to this subpart, except as specified in paragraph (g) of this section.

(b) You must adhere to the response intervals specified in Tables 1 through 4 to this subpart at all times. Nonadherence to the intervals in Tables 1 through 4 to this subpart constitutes a deviation and must be documented and reported in the compliance report, as required by § 63.8254(b), with the date and time of the deviation, cause of the deviation, a description of the conditions, and time actual compliance was achieved.

(c) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in Tables 1 through 4 to this subpart.

(d) You must institute a floor-level mercury vapor measurement program to limit the amount of mercury vapor in the cell room environment through periodic measurement of mercury vapor levels and actions to be taken when a floor-level mercury concentration action level is exceeded. The program must meet the requirements listed in paragraphs (d)(1) through (4) of this section. As specified in § 63.8252(e)(1)(i) to implement this program, you must prepare and submit to the Administrator a floor-level mercury vapor measurement plan which must contain the elements listed in Table 5 to this subpart.

(1) You must utilize a mercury measurement device described in of Table 6 to this subpart to measure the level of mercury vapor in the cell room at floor-level.

(2) You must conduct at least one floor-level mercury vapor measurement evaluation each half day. This evaluation must include three measurements of the mercury concentration at locations representative of the entire cell room floor area. The average of these measurements must be recorded as specified in § 63.8156(c)(1). At a minimum, you must measure the level of mercury vapor above mercury-containing cell room equipment, as well as areas around the cells, decomposers, or other mercury-containing equipment.

(3) You must establish a floor-level mercury concentration action level that is no higher than 0.05 milligrams per cubic meter (mg/m^3).

(4) If a mercury concentration greater than the action level is measured during any floor-level mercury vapor measurement evaluation, you must meet the requirements in either paragraph (d)(4)(i) or (ii) of this section.

(i) If you determine that the cause of the elevated mercury concentration is an open electrolyzer, decomposer, or

other maintenance activity, you must record the information specified in paragraphs (d)(4)(i)(A) through (C) of this section.

(A) A description of the maintenance activity resulting in elevated mercury concentration;

(B) The time the maintenance activity was initiated and completed; and

(C) A detailed explanation how all the applicable requirements of Table 1 to this subpart were met during the maintenance activity.

(ii) If you determine that the cause of the elevated mercury concentration is not an open electrolyzer, decomposer, or other maintenance activity, you must follow the procedures specified in paragraphs (d)(4)(ii)(A) and (B) of this section until the floor-level mercury concentration falls below the floor-level mercury concentration action level. You must also keep all the associated records for these procedures as specified in Table 9 to this subpart.

(A) Within 1 hour of the time the floor-level mercury concentration action level was exceeded, you must conduct each inspection specified in Table 2 to this subpart in the area where the concentration higher than the floor-level mercury concentration action level was measured, with the exception of the cell room floor and the pillars and beam inspections. (B) You must also inspect all decomposers, hydrogen system piping up to the hydrogen header, and other potential locations of mercury vapor leaks in the area using a technique specified in Table 6 to this subpart. You must correct any problem identified during these inspections according to the requirements in Tables 2 and 3 to this subpart.

(e) You must prepare, submit, and operate according to a written washdown plan designed to minimize fugitive mercury emissions through routine washing of surfaces where liquid mercury could accumulate. The written plan must address the elements contained in Table 7 to this subpart.

(f) You must keep records of the mass of all virgin mercury added to cells on an annual basis.

(g) As an alternative to the work practice standards in paragraphs (a) through (d) of this section, you may institute a cell room monitoring program to continuously monitor the mercury vapor concentration in the upper portion of each cell room and to take corrective actions as quickly as possible when elevated mercury vapor levels are detected. As specified in § 63.8252(e)(1)(iv), if you choose this option, you must prepare and submit to the Administrator, a cell room monitoring plan containing the elements listed in Table 5 to this subpart and meet the requirements in paragraphs (g)(1) through (4) of this section.

(1) You must utilize mercury monitoring systems that meet the requirements of Table 8 to this subpart.

(2) You must establish an action level according to the requirements in paragraphs (g)(2)(i) through (iii) of this section.

(i) Beginning on the compliance date specified for your affected source in § 63.8186, measure and record the mercury concentration for at least 30 days using a system that meets the requirements of paragraph (g)(1) of this section.

(ii) Using the monitoring data collected according to paragraph (g)(1)(i) of this section, establish your action level at the 75th percentile of the data set.

(iii) Submit your action level as part of your Notification of Compliance Status report according to § 63.8252(e)(1).

(3) Beginning on the compliance date specified for your affected source in § 63.8186, you must continuously monitor the mercury concentration in the cell room. Failure to monitor and record the data according to § 63.8256(c)(4)(ii) for 75 percent of the time in any 6-month period constitutes a deviation.

(4) If the average mercury concentration for any 1-hour period exceeds the action level established according to paragraph (g)(2) of this section, you must meet the requirements in either paragraph (g)(4)(i) or (ii) of this section.

(i) If you determine that the cause of the elevated mercury concentration is an open electrolyzer, decomposer, or other maintenance activity, you must record the information specified in paragraphs (g)(4)(i)(A) through (C) of this section.

(A) A description of the maintenance activity resulting in elevated mercury concentration;

(B) The time the maintenance activity was initiated and completed; and

(C) A detailed explanation how all the applicable requirements of Table 1 to this subpart were met during the maintenance activity.

(ii) If you determine that the cause of the elevated mercury concentration is not an open electrolyzer, decomposer, or other maintenance activity, you must follow the procedures specified in paragraphs (g)(4)(ii)(A) and (B) of this section until the mercury concentration falls below the action level. You must also keep all the associated records for these procedures as specified in Table 9 to this subpart.

(A) Within 1 hour of the time the action level was exceeded, you must conduct each inspection specified in Table 2 to this subpart, with the exception of the cell room floor and the pillars and beam inspections. You must correct any problem identified during these inspections in accordance with the requirements in Table 2 and 3 to this subpart.

(B) If the Table 2 inspections and subsequent corrective actions do not reduce the mercury concentration below the action level, you must inspect all decomposers, hydrogen system piping up to the hydrogen header, and other potential locations of mercury vapor leaks using a technique specified in Table 6 to this subpart. If a mercury vapor leak is identified, you must take the appropriate action specified in Table 3 to this subpart.

Operation and Maintenance Requirements

§ 63.8222 What are my operation and maintenance requirements?

As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source(s), including air pollution control and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

General Compliance Requirements

§ 63.8226 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the applicable emission limitations for by-product hydrogen streams, end box ventilation system vents, and mercury thermal recovery unit vents in § 63.8190 at all times, except during periods of startup, shutdown, and malfunction. You must be in compliance with the applicable work practice standards in § 63.8192 at all times, except during periods of startup, shutdown, and malfunction.

(b) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.8230 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) You must conduct a performance test no later than the compliance date that is specified in § 63.8186 for your affected source to demonstrate initial compliance with the applicable emission limit in § 63.8190(a)(2) for by-product hydrogen streams and end box ventilation system vents and the

applicable emission limit in § 63.8190(a)(3) for mercury thermal recovery unit vents.

(b) For the applicable work practice standards in § 63.8192, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.8186.

§ 63.8232 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits?

You must conduct a performance test for each by-product hydrogen stream, end box ventilation system vent, and mercury thermal recovery unit vent according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraphs (a) through (d) of this section.

(a) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(b) For each performance test, you must develop a site-specific test plan in accordance with § 63.7(c)(2).

(c) You must conduct at least three test runs to comprise a performance test, as specified in § 63.7(e)(3) and in either paragraph (c)(1) or (2) of this section.

(1) The sampling time and sampling volume for each run must be at least 2 hours and 1.70 dry standard cubic meters (dscm). Mercury results below the analytical laboratory's detection limit must be reported using the reported analytical detection limit to calculate the sample concentration value and, in turn, the emission rate in the units of the standard; or

(2) The sampling time for each test run must be at least 2 hours and the mercury concentration in each field sample analyzed must be at least two times the reported analytical detection limit.

(d) You must use the test methods specified in paragraphs (d)(1) through (4) of this section and the applicable test methods in paragraphs (d)(5) through (7) of this section.

(1) Method 1 or 1A in appendix A of 40 CFR part 60 to determine the sampling port locations and the location and required number of sampling traverse points.

(2) Method 2, 2A, 2C, or 2D in appendix A of 40 CFR part 60 to determine the stack gas velocity and volumetric flow rate.

(3) Method 3, 3A, or 3B in appendix A of 40 CFR part 60 to determine the stack gas molecular weight.

(4) Method 4 in appendix A of 40 CFR part 60 to determine the stack gas moisture content.

(5) For each by-product hydrogen stream, Method 102 in appendix A of 40 CFR part 61 to measure the mercury emission rate after the last control device.

(6) For each end box ventilation system vent, Method 101 or 101A in appendix A of 40 CFR part 61 to measure the mercury emission rate after the last control device.

(7) For each mercury thermal recovery unit vent, Method 101 or 101A in appendix A of 40 CFR part 61 to measure the mercury emission rate after the last control device.

(e) During each test run for a by-product hydrogen stream and each test run for an end box ventilation system vent, you must continuously measure the electric current through the operating mercury cells and record a measurement at least once every 15 minutes.

(f) If the final control device is not a nonregenerable carbon adsorber and if you are demonstrating compliance using periodic monitoring under § 63.8240(b), you must continuously monitor the parameters listed in paragraph (f)(1) of this section and establish your maximum or minimum monitoring value (as appropriate for your control device) using the requirements in paragraph (f)(2) of this section.

(1) During the performance test specified in paragraphs (a) through (d) of this section, you must continuously monitor the control device parameters in paragraphs (f)(1)(i) through (vii) of this section and record a measurement at least once every 15 minutes.

(i) The exit gas temperature from uncontrolled streams;

(ii) The outlet temperature of the gas stream for the final (*i.e.*, the farthest downstream) cooling system when no control devices other than coolers or demisters are used;

(iii) The outlet temperature of the gas stream from the final cooling system when the cooling system is followed by a molecular sieve or regenerative carbon adsorber;

(iv) Outlet concentration of available chlorine, pH, liquid flow rate, and inlet gas temperature of chlorinated brine scrubbers and hypochlorite scrubbers;

(v) The liquid flow rate and exit gas temperature for water scrubbers;

(vi) The inlet gas temperature of regenerative carbon adsorption systems; and

(vii) The temperature during the heating phase of the regeneration cycle for carbon adsorbers or molecular sieves.

(2) To establish a maximum monitoring value or minimum monitoring value, as appropriate for your final control device, you must average the recorded parameters in paragraphs (f)(1)(i) through (vi) of this section over the test period. If your final control device is a regenerative carbon adsorber, you must use the highest temperature reading measured in paragraph (f)(1)(vii) as the reference temperature in § 63.8244(b)(2)(v).

§ 63.8234 What equations and procedures must I use for the initial compliance demonstration?

(a) *By-product hydrogen streams and end box ventilation system vents.* You must determine the total grams of mercury per Megagram of chlorine production (g Hg/Mg Cl_2) of chlorine produced from all by-product hydrogen streams and all end box ventilation system vents, if applicable, at a mercury cell chlor-alkali production facility, and you must follow the procedures in paragraphs (a)(1) through (6) of this section.

(1) Determine the mercury emission rate for each test run in grams per day for each by-product hydrogen stream and for each end box ventilation system vent, if applicable, from Method 101, 101A, or 102 (40 CFR part 61, appendix A).

(2) Calculate the average measured electric current through the operating mercury cells during each test run for each by-product hydrogen stream and for each end box ventilation system vent, if applicable, using Equation 1 of this section as follows:

$$CL_{avg,\ run} = \frac{\sum_{i=1}^{n} CL_{i,\ run}}{n} \qquad \text{(Eq. 1)}$$

Where:

$CL_{avg,\ run}$ = Average measured cell line current load during the test run, amperes;

$CL_{i,\ run}$ = Individual cell line current load measurement (*i.e.*, 15 minute reading) during the test run, amperes; and

n = Number of cell line current load measurements taken over the duration of the test run.

(3) Calculate the amount of chlorine produced during each test run for each by-product hydrogen stream and for each end box ventilation system vent, if applicable, using Equation 2 of this section as follows:

$$P_{Cl_2,\,run} = \left(1.3\times10^{-6}\right)\left(CL_{avg,\,run}\right)\left(n_{cells,\,run}\right)\left(t_{run}\right) \qquad \text{(Eq. 2)}$$

Where:

$P_{Cl_2,run}$ = Amount of chlorine produced during the test run, megagrams chlorine (Mg Cl_2);

1.3×10^{-6} = Theoretical chlorine production rate factor, Mg Cl_2 per hour per ampere per cell;

$CL_{avg,run}$ = Average measured cell line current load during test run, amperes, calculated using Equation 1 of this section;

$n_{cell,run}$ = Number of cells on-line during the test run; and

t_{run} = Duration of test run, hours.

(4) Calculate the mercury emission rate in grams of mercury per megagram of chlorine produced for each test run for each by-product hydrogen stream and for each end box ventilation system vent, if applicable, using Equation 3 of this section as follows:

$$E_{Hg,\,run} = \left[\frac{\left(R_{run}\right)\left(t_{run}\right)}{(24)\left(P_{Cl_2,\ run}\right)}\right] \qquad \text{(Eq. 3)}$$

Where:

$E_{Hg,run}$ = Mercury emission rate for the test run, g Hg/Mg Cl_2;

R_{run} = Measured mercury emission rate for the test run from paragraph (a)(1) of this section, grams Hg per day;

t_{run} = Duration of test run, hours;

24 = Conversion factor, hours per day; and

$P_{Cl_2,run}$ = Amount of chlorine produced during the test run, calculated using Equation 2 of this section, Mg Cl_2.

(5) Calculate the average mercury emission rate for each by-product hydrogen stream and for each end box ventilation system vent, if applicable, using Equation 4 of this section as follows:

$$E_{Hg,\,avg} = \frac{\sum_{i=1}^{n} E_{Hg,\,run}}{n} \qquad \text{(Eq. 4)}$$

Where:

$E_{Hg,avg}$ = Average mercury emission rate for the by-product hydrogen stream or the end box ventilation system vent, if applicable, g Hg/Mg Cl_2;

$E_{Hg,run}$ = Mercury emission rate for each test run for the by-product hydrogen stream or the end box ventilation system vent, if applicable, g Hg/Mg Cl_2, calculated using Equation 3 of this section; and

n = Number of test runs conducted for the by-product hydrogen stream or the end box ventilation system vent, if applicable.

(6) Calculate the total mercury emission rate from all by-product hydrogen streams and all end box ventilation system vents, if applicable, at the mercury cell chlor-alkali production facility using Equation 5 of this section as follows:

$$E_{Hg,\,H_2EB} = \sum_{i=1}^{n} E_{Hg,\,avg} \qquad \text{(Eq. 5)}$$

Where:

E_{Hg,H_2EB} = Total mercury emission rate from all by-product hydrogen streams and all end box ventilation system vents, if applicable, at the affected source, g Hg/Mg Cl_2;

$E_{Hg,avg}$ = Average mercury emission rate for each by-product hydrogen stream and each end box ventilation system vent, if applicable, g Hg/Mg Cl_2, determined using Equation 4 of this section; and

n = Total number of by-product hydrogen streams and end box ventilation system vents at the affected source.

(b) *Mercury thermal recovery vents.* You must determine the milligrams of mercury per dscm exhaust discharged from mercury thermal recovery unit vents, using the procedures in paragraphs (b)(1) and (2) of this section.

(1) Calculate the concentration of mercury in milligrams of mercury per dscm of exhaust for each test run for each mercury thermal recovery unit vent using Equation 6 of this section as follows:

$$C_{Hg,\,run} = \left[\frac{\left(m_{Hg}\right)\left(10^{-3}\right)}{\left(V_{m(std)}\right)}\right] \qquad \text{(Eq. 6)}$$

Where:

$C_{Hg,run}$ = Mercury concentration for the test run, milligrams of mercury per dry standard cubic meter of exhaust;

m_{Hg} = Mass of mercury in test run sample, from Method 101, 101A, or 102, micrograms;

10-3 = Conversion factor, milligrams per microgram; and

$V_{m(std)}$ = Dry gas sample volume at standard conditions, from Method 101, 101A, or 102, dry standard cubic meters.

(2) Calculate the average concentration of mercury in each mercury thermal recovery unit vent exhaust using Equation 7 of this section as follows:

$$C_{Hg,\,avg} = \frac{\sum_{i=1}^{n} C_{Hg,\,run}}{n} \qquad \text{(Eq. 7)}$$

Where:

$C_{Hg,avg}$ = Average mercury concentration for the mercury thermal recovery unit vent, milligrams of mercury per dry standard cubic meter exhaust;

$C_{Hg,run}$ = Mercury concentration for each test run, milligrams of mercury per dry standard cubic meter of exhaust, calculated using Equation 6 of this section; and

n = Number of test runs conducted for the mercury thermal recovery unit vent.

§ 63.8236 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) For each mercury cell chlor-alkali production facility, you have demonstrated initial compliance with the applicable emission limit for by-product hydrogen streams and end box ventilation system vents in § 63.8190(a)(2) if you comply with paragraphs (a)(1) and (2) of this section:

(1) Total mercury emission rate from all by-product hydrogen streams and all end box ventilation system vents, if applicable, at the affected source, determined according to §§ 63.8232 and 63.8234(a), did not exceed the applicable emission limit in § 63.8190(a)(2)(i) or (ii); and

(2) If you have chosen the periodic monitoring option specified in § 63.8240(b) and your final control device is not a nonregenerable carbon adsorber, you have established a parameter value according to § 63.8232(f)(2).

(b) For each mercury recovery facility, you have demonstrated initial compliance with the applicable emission limit for mercury thermal recovery unit vents in § 63.8190(a)(3) if you comply with paragraphs (b)(1) and (2) of this section.

(1) Mercury concentration in each mercury thermal recovery unit vent exhaust, determined according to §§ 63.8232 and 63.8234(b), did not exceed the applicable emission limit in § 63.8190(a)(3)(i) or (ii); and

(2) If you have chosen the periodic monitoring option in § 63.8240(b) and have a final control device that is not a nonregenerable carbon adsorber, you

have established a maximum or minimum monitoring value, as appropriate for your control device according to § 63.8232(f)(2).

(c) For each affected source, you have demonstrated initial compliance with the applicable work practice standards in § 63.8192 if you comply with paragraphs (c)(1) through (7) of this section.

(1) You certify in your Notification of Compliance Status that you are operating according to the work practice standards in § 63.8192(a) through (d).

(2) You choose the continuous cell room monitoring program option, you certify in your Notification of Compliance Status that you are operating according to the continuous cell room monitoring program under § 63.8192(g) and you have established your action level according to § 63.8192(g)(2).

(3) You certify in your Notification of Compliance Status that you are operating according to your washdown plan.

(4) You have submitted your washdown plan as part of your Notification of Compliance Status.

(5) You have submitted your continuous cell room monitoring plan, if applicable, as part of your Notification of Compliance Status.

(6) You have submitted your floor-level cell room monitoring plan, if applicable, as part of your Notification of Compliance Status.

(7) You have submitted records of the mass of virgin mercury added to cells for the 5 years preceding the applicable compliance date for your affected source as a part of the Notification of Compliance Status.

(d) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8252(e).

Continuous Compliance Requirements

§ 63.8240 What are my monitoring requirements?

For each by-product hydrogen stream, each end box ventilation system vent, and each mercury thermal recovery unit vent, you must monitor the mercury emissions using the procedures in paragraph (a) or (b) of this section.

(a) You must continuously monitor the mercury concentration using a mercury continuous emissions monitor according to the requirements in §§ 63.8242(a) and 63.8244(a); or

(b) You must periodically monitor the mercury emissions according to the requirements in §§ 63.8242(b) and 63.8244(b).

§ 63.8242 What are the installation, operation, and maintenance requirements for my continuous monitoring systems?

(a) If you choose the continuous mercury monitoring option under § 63.8240(a), you must install, operate, and maintain each mercury continuous emissions monitor according to paragraphs (a)(1) through (5) of this section.

(1) Each mercury continuous emissions monitor must sample, analyze, and record the concentration of mercury at least once every 15 minutes.

(2) Each mercury continuous emissions monitor analyzer must have a detector with the capability to detect a mercury concentration at or below 0.5 times the mercury concentration level measured during the performance test conducted according to § 63.8232.

(3) In lieu of a promulgated performance specification as required in § 63.8(a)(2), you must develop a site-specific monitoring plan that addresses the elements in paragraphs (a)(3)(i) through (vi) of this section.

(i) Installation and measurement location downstream of the final control device for each by-product hydrogen stream, end box ventilation system vent, and mercury thermal recovery unit vent.

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration analyzer, and the data collection and reduction system.

(iii) Performance evaluation procedures and acceptance criteria (*i.e.*, calibrations).

(iv) Ongoing operation and maintenance procedures according to the requirements of § 63.8(c)(1), (3), and (4)(ii).

(v) Ongoing data quality assurance procedures according to the requirements of § 63.8(d).

(vi) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(4) You must conduct a performance evaluation of each mercury continuous emissions monitor according to your site-specific monitoring plan.

(5) You must operate and maintain each mercury continuous emissions monitor in continuous operation according to the site-specific monitoring plan.

(b) If you choose the periodic monitoring option and your final control device is not a nonregenerable carbon adsorber, you must install, operate, and maintain a continuous parameter monitoring system (CPMS) for each parameter specified in § 63.8232(f)(1), according to § 63.8(c).

§ 63.8243 What equations and procedures must I use to demonstrate continuous compliance?

(a) *By-product hydrogen streams and end box ventilation system vents.* For each consecutive 52-week period, you must determine the g Hg/Mg Cl_2 produced from all by-product hydrogen streams and all end box ventilation system vents, if applicable, at a mercury cell chlor-alkali production facility using the procedures in paragraphs (a)(1) through (3) of this section. You must begin collecting data on the compliance date that is specified in § 63.8186 for your affected source and calculate your first 52-week average mercury emission rate at the end of the 52nd week after the compliance date.

(1) Each week, you must determine the weekly mercury emission rate in grams per week for each by-product hydrogen stream and for each end box ventilation system vent, if applicable, using one of the monitoring options in paragraph (a)(1)(i) or (ii) of this section.

(i) Continuous mercury monitoring according to §§ 63.8242 and 63.8244(a).

(ii) Periodic monitoring according to § 63.8244(b).

(2) Each week, you must determine the chlorine production and keep records of the production rate as required under § 63.8256(b)(6).

(3) Beginning 52 weeks after the compliance date specified in § 63.8186 for your affected source, you must calculate the 52-week average mercury emission rate from all by-product hydrogen steam and all end box ventilation system vents, if applicable, using Equation 1 of this section as follows:

$$E_{Hg} = \sum_{i=1}^{52} \left[\frac{\left(R_{week_i}\right)}{\left(P_{Cl_2,week_i}\right)} \right] \quad \text{(Eq. 1)}$$

Where:

E_{Hg} = 52-week average mercury emission rate for $week_i$, g Hg/Mg Cl_2;

$R_{week,\ i}$ = Mercury emission rate for $week_i$ from paragraph (a)(1) of this section, g Hg per week;

$P_{Cl2,\ weeki}$ = Amount of chlorine produced during $week_i$, from paragraph (a)(2) of this section, Mg Cl_2 per week.

(b) *Mercury thermal recovery units.* If you choose the continuous monitoring option in § 63.8240(a), you must demonstrate continuous compliance using paragraph (b)(1) of this section. If you choose the periodic monitoring option in § 63.8240(b), you must demonstrate continuous compliance using paragraph (b)(2) of this section.

(1) You must calculate the daily average mercury concentration using Equation 2 of this section as follows:

$$C_{Hg,\ dailyavg} = \frac{\left(\sum_{i=1}^{n} C_{Hg,\ i}\right)}{n} \quad \text{(Eq. 2)}$$

Where:

$C_{Hg,\ dailyavg}$ = Average mercury concentration for the operating day, milligrams per dry standard cubic meter;

$C_{Hg,i}$ = Concentration of mercury measured at the interval *i* (*i.e.,* 15 minute reading) using a mercury continuous emission monitor, milligrams per dry standard cubic meter; and

n = Number of concentration measurements taken during the operating day.

(2) You must calculate the daily average mercury concentration using the procedures in § 63.8234(b).

§ 63.8244 How do I monitor and collect data to demonstrate continuous compliance?

(a) *Continuous monitoring option.* You must monitor mercury concentration according to § 63.8242(a) at all times that the affected source is operating with the exception of paragraphs (a)(1) and (2) of this section.

(1) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor mercury emissions continuously (or collect data at all required intervals) at all times that the affected source is operating. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(2) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(b) *Periodic monitoring option.* If you choose the periodic monitoring option under § 63.8240(b), you must monitor according to the procedures in paragraph (b)(1) or (2) of this section.

(1) If your final control device is a nonregenerable carbon adsorber, then you must conduct at least three test runs per week meeting the criteria specified in § 63.8232(c)(1) and (2) to measure mercury emissions using the test methods specified in § 63.8232(d). Alternatively, you may use any other method that has been validated using the applicable procedures in Method 301, 40 CFR part 63, appendix A.

(2) If your final control device is anything other than a nonregenerable carbon adsorber, you must monitor according to the requirements of paragraphs (b)(2)(i) through (v) of this section.

(i) You must conduct at least three test runs per week meeting the criteria specified in § 63.8232(c)(1) and (2) to measure mercury emissions using the test methods specified in § 63.8232(d). Alternatively, you may use any other method that has been validated using the applicable procedures in Method 301, 40 CFR part 63, appendix A.

(ii) Except as specified in paragraph (b)(2)(iii) of this section, you must continuously collect data at least once every 15 minutes using a CPMS installed and operated according to § 63.8242(b) and record each 1-hour average from all measured data values during each 1-hour period for the applicable parameter identified in § 63.8232(f)(1) using the methods specified in § 63.8244(a).

(iii) As appropriate, you must continuously monitor the temperature specified in § 63.8232(f)(1)(vii) during each heating phase of the regeneration cycle of your carbon adsorber.

(iv) If the hourly average monitoring value of any applicable parameter recorded under paragraph (b)(2)(ii) of this section is below the minimum monitoring value or above the maximum monitoring value of that same parameter established under § 63.8232(f)(2) for 24 consecutive hours, your monitoring value is out of range and you must take corrective action as soon as practicable. The hourly average monitoring value must be above the minimum monitoring value or below the maximum monitoring value as appropriate for that parameter, within 48 hours of the period that the monitoring value is out of range.

(v) If your final control device is a regenerative carbon adsorber, when the maximum hourly value of the temperature measured according to paragraph (b)(2)(iii) of this section is below the reference temperature determined according to § 63.8232(f)(2) for three consecutive regeneration cycles, your monitoring value is out of range and you must take corrective action as soon as practicable. During the first regeneration cycle following the period that your monitoring value is out of range, the maximum hourly value must be above the reference temperature recorded according to § 63.8232(f)(2).

§ 63.8246 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) *By-product hydrogen streams and end box ventilation system vents.* (1) For all by-product hydrogen streams and all end box ventilation system vents, if applicable, you must demonstrate continuous compliance with the applicable mercury emission limit by reducing the mercury emissions data to 52-week averages using Equation 1 of § 63.8243 and maintaining the 52-week average mercury emissions no higher than the applicable mercury emissions limit in § 63.8190(a)(2). To obtain the data to calculate these 52-week averages, you must monitor in accordance with paragraph (a)(1)(i) or (ii) of this section.

(i) *Continuous monitoring option.* You must collect mercury emissions data according to § 63.8244(a), representing at least 75 percent of the 15-minute periods in each operating day of the 52-week compliance period (with data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities not counting toward the 75 percent requirement);

(ii) *Periodic monitoring option.* You must conduct at least three test runs per week to collect mercury emissions samples according to § 63.8244(b)(1) and (2)(i) and, if your final control device is not a nonregenerable carbon adsorber, you must collect data for monitoring values according to § 63.8244(b)(2)(ii) through (v).

(2) You must maintain records of mercury emissions and 52-week average values, as required in § 63.8256(b)(3) and (4). If your final control device is not a nonregenerable carbon adsorber, you must maintain records according to § 63.8256(d).

(b) *Mercury thermal recovery unit vents.* (1) For each mercury thermal recovery unit vent, you must demonstrate continuous compliance with the applicable emission limit specified in § 63.8190(a)(3) by maintaining the outlet mercury hourly-average concentration no higher than the applicable limit. To determine the outlet mercury concentration, you must monitor according to paragraph (b)(1)(i) or (ii) of this section.

(i) *Continuous monitoring option.* You must collect mercury concentration data according to § 63.8244(a), representing at least 75 percent of the 15-minute periods in the operating day (with data

recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities not counting toward the 75 percent requirement).

(ii) *Periodic monitoring option.* You must conduct at least three test runs per week to collect mercury emissions samples according to § 63.8244(b)(1) and (2)(i) and, if your final control device is not a nonregenerable carbon adsorber, you must collect data for monitoring values according to § 63.8244(b)(2)(ii) through (v).

(2) You must maintain records of mercury emissions and daily average values as required in § 63.8256(b)(3). If your final control device is not a nonregenerable carbon adsorber, you must maintain records according to § 63.8256(d).

(c) You must demonstrate continuous compliance with the applicable work practice standards in § 63.8192 by maintaining records in accordance with § 63.8256(c).

§ 63.8248 What other requirements must I meet?

(a) *Deviations.* The instances specified in paragraphs (a)(1) through (4) of this section are deviations and must be reported according to the requirements in § 63.8254.

(1) You must report each instance in which you did not meet each emission limitation in § 63.8190 that applies to you. This includes periods of startup, shutdown, and malfunction.

(2) You must report each instance in which you did not meet each work practice standard in § 63.8192 that applies to you. This includes periods of startup, shutdown, and malfunction.

(3) You must report each instance in which the corrective actions taken according to § 63.8244(b)(2)(iv) did not result in average monitoring values being within range within 48 hours of the period that the monitoring value is out of range.

(4) You must report each instance in which the corrective action taken according to § 63.8244(b)(2)(v) did not result in the maximum hourly temperature being above the reference temperature during the first regeneration cycle following the period that the monitoring value was out of range.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan that satisfies the requirements in § 63.6(e) and as required in § 63.8226(b).

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you have an adequate startup, shutdown, or malfunction plan that satisfies the requirements of § 63.6(e), and you have complied with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(3) By-passing the control device for maintenance activities is not considered a startup, shutdown, or malfunction event.

Notification, Reports, and Records

§ 63.8252 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e) and (f) and 63.9(b) through (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before December 19, 2003, you must submit your initial notification not later than April 19, 2004.

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed mercury recovery facility on or after December 19, 2003, you must submit your initial notification not later than 120 days after you become subject to this subpart.

(d) For each performance test that you are required to conduct for by-product hydrogen streams and end box ventilation system vents and for mercury thermal recovery unit vents, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 7(b)(1).

(e) You must submit a Notification of Compliance Status according to paragraphs (e)(1) and (2) of this section.

(1) For each initial compliance demonstration that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration. The Notification of Compliance Status must contain the items in paragraphs (e)(1)(i) through (iv) of this section:

(i) If you choose not to implement a cell room monitoring program according to § 63.8192(g), a certification that you are operating according to the applicable work practice standards in § 63.8192(a) through (d) and your floor-level mercury vapor measurement plan required by § 63.8192(d).

(ii) The washdown plan, and you must certify that you are operating according to the washdown plan specified in § 63.8192(f).

(iii) The mass of virgin mercury added to cells for the 5 years preceding the compliance date.

(iv) If you choose to implement a cell room monitoring program according to § 63.8192(g), your cell room monitoring plan.

(2) For each initial compliance demonstration that does include a performance test, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2). The Notification of Compliance Status must contain the information in § 63.9(h)(2)(ii)(A) through (G). The site-specific monitoring plan required in § 63.8242(a)(3) must also be submitted.

§ 63.8254 What reports must I submit and when?

(a) *Compliance report due dates.* You must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (4) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8186 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your affected source in § 63.8186.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance reporting period.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(b) *Compliance report contents.* Each compliance report must contain the information in paragraphs (b)(1) through (3) of this section, and as applicable, paragraphs (b)(4) through (12) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in § 63.8246 that apply to you, a statement that there were no deviations from the emission limitations, work practice standards, and operation and maintenance standards during the reporting period.

(6) If there were no periods during which the mercury continuous emission monitor or CPMS (if applicable) were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during the which the mercury continuous emissions monitor or CPMS (if applicable) were out-of-control during the reporting period.

(7) For each deviation from the requirements for work practice standards in Tables 1 through 4 to this subpart that occurs at an affected source (including deviations where the response intervals were not adhered to as described in § 63.8192(b)), the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a mercury continuous emission monitor, according to the site-specific monitoring plan required in § 63.8242(a)(3), to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time of each instance in which a continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration of each instance in which a continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) An identification of each hazardous air pollutant that was monitored at the affected source.

(ix) A brief description of the process units.

(x) A brief description of the continuous monitoring system.

(xi) The date of the latest continuous monitoring system certification or audit.

(xii) A description of any changes in monitoring system, processes, or controls since the last reporting period.

(9) For each deviation from an operation and maintenance standard occurring at an affected source where you are using the periodic monitoring option specified in § 63.8240(b) and your final control device is not a nonregenerable carbon adsorber, the compliance report must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(9)(i) through (x) of this section. This includes periods of startups, shutdowns and malfunctions.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, whether the deviation occurred during a period of startup, shutdown, or malfunction, or other period, and the corrective action taken.

(iii) The date and time of each instance in which a CPMS was inoperative, except for zero (low-level) and high-level checks.

(iv) The date, time, and duration of each instance in which a CPMS was out-of-control, including the information specified in § 63.8(c)(8).

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the CPMS.

(ix) The date of the latest CPMS certification or audit.

(x) A description of any changes in monitoring system, processes, or controls since the last reporting period.

(10) The compliance report must contain the mass of virgin mercury added to cells for the reporting period.

(11) The compliance report must contain each instance in which corrective actions taken under § 63.8244(b)(2)(iv) did not result in average monitoring values being within range within 48 hours of the period that the monitoring value is out of range.

(12) The compliance report must contain each instance in which corrective action taken according to § 63.8244(b)(2)(v) did not result in the maximum hourly temperature being above the reference temperature during the first regeneration cycle following the period that the monitoring value was out of range.

(c) *Immediate startup, shutdown, and malfunction report.* If you took an action during a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan required in § 63.8226(b), and the source exceeded any applicable emission limitation in this subpart, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Title V monitoring report.* After your affected source has been issued a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations from permit requirements and provide reports of any required monitoring in your semiannual monitoring report as required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a

semiannual compliance report for an affected source as required by this subpart as part of the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all information required by the 40 CFR part 70 or 40 CFR part 71 semiannual monitoring report for the deviations that are reported in the semiannual compliance report, submission of the semiannual compliance report satisfies your obligation to report the same deviation information in the semiannual monitoring report. However, in such situations, the semiannual monitoring report must cross-reference the semiannual compliance report, and submission of a semiannual compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority under 40 CFR part 70 or 40 CFR part 71.

§ 63.8256 What records must I keep?

(a) *General records.* You must keep the records in paragraphs (a)(1) and (2) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(b) Records associated with the by-product hydrogen stream and end box ventilation system vent emission limitations and the mercury thermal recovery unit vent emission limitations. You must keep the records in paragraphs (b)(1) through (5) of this section related to the emission limitations in § 63.8190(a)(2) through (3) and (b).

(1) Records of performance tests as required in § 63.10(b)(2)(viii).

(2) Records of the mercury emissions monitoring conducted during the performance tests.

(3) Records of the continuous or periodic mercury emissions monitoring data.

(4) Records of the 52-week rolling average mercury emissions.

(5) Records associated with your site-specific monitoring plan required in § 63.8242(a)(3) (*i.e.,* results of inspections, calibrations, and validation checks of each mercury concentration continuous monitoring system (CMS)).

(6) Records of chlorine production on a weekly basis.

(c) Records associated with the work practice standards.

(1) If you choose not to institute a cell room monitoring program according to § 63.8192(g) of this subpart, you must keep the records specified in paragraphs (c)(1)(i) through (v) of this section.

(i) Records specified in Table 9 to this subpart related to the work practice standards in Tables 1 through 4 of this subpart.

(ii) Your current floor-level mercury vapor measurement plan.

(iii) Records of the average value calculated from at least three measurements taken according to your floor-level mercury vapor measurement plan.

(iv) Records indicated in § 63.8192(d)(4)(i) for maintenance activities that cause the floor-level mercury concentration to exceed the action level.

(v) Records of all inspections and corrective actions taken in response to a non-maintenance related situation in which the mercury vapor concentration exceeds the floor-level mercury concentration action level.

(2) You must maintain a copy of your current washdown plan and records of when each washdown occurs.

(3) You must maintain records of the mass of virgin mercury added to cells for each reporting period.

(4) If you choose to institute a cell room monitoring program according to § 63.8192(g) of this subpart, you must keep your current cell room monitoring plan and the records specified in paragraphs (c)(4)(i) through (v) of this section.

(i) Records of the monitoring conducted in accordance with § 63.8192(g)(2)(i) to establish your action level, and records demonstrating the development of this action level.

(ii) Records of the cell room mercury concentration monitoring data collected.

(iii) Instances when the action level is exceeded.

(iv) Records specified in § 63.8192(g)(4)(i) for maintenance activities that cause the mercury vapor concentration to exceed the action level.

(v) Records of all inspections and corrective actions taken in response to a non-maintenance related situation in which the mercury vapor concentration exceeds the action level.

(d) Records associated with the periodic monitoring option if your final control device is not a nonregenerable carbon adsorber. You must keep the records in paragraph (d)(1) through (3) of this section.

(1) Records of the CPMS data collected during the performance test as specified in § 63.8232(f)(1).

(2) Records documenting the development of the maximum monitoring value or minimum monitoring value, as appropriate, according to § 63.8232(f)(2).

(3) Records of hourly average values of applicable parameters monitored as specified in § 63.8244(b)(2)(ii) or (iii).

§ 63.8258 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious inspection and review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8262 What parts of the General Provisions apply to me?

Table 10 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.8264 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities in paragraphs (c)(1) through (4) of this section will not be delegated to State, local, or tribal agencies.

(1) Approval of alternatives under § 63.6(g) to the non-opacity emission limitations in § 63.8190 and work practice standards in § 63.8192.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8266 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, and in this section as follows:

Aqueous liquid means a liquid mixture in which water is the predominant component.

Brine means an aqueous solution of alkali metal chloride, as sodium chloride salt solution or potassium chloride salt solution, that is used in the electrolyzer as a raw material.

By-product hydrogen stream means the hydrogen gas from each decomposer that passes through the hydrogen system and is burned as fuel, transferred to another process as raw material, or discharged directly to the atmosphere.

Caustic means an aqueous solution of alkali metal hydroxide, as sodium hydroxide or potassium hydroxide, that is produced in the decomposer.

Caustic basket means a fixture adjacent to the decomposer that contains a serrated funnel over which the caustic from the decomposer passes, breaking into droplets such that electric current is interrupted.

Caustic system means all vessels, piping, and equipment that convey caustic and remove mercury from the caustic stream. The caustic system begins at the decomposer and ends after the primary filters.

Cell room means a building or other structure in which one or more mercury cells are located.

Continuous parameter monitoring system, or CPMS, means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of process of control system parameters.

Control device means a piece of equipment (such as condensers, coolers, chillers, heat exchangers, mist eliminators, absorption units, and adsorption units) that removes mercury from gaseous streams.

Decomposer means the component of a mercury cell in which mercury amalgam and water react in bed of graphite packing (within a cylindrical vessel), producing caustic and hydrogen gas and returning mercury to its elemental form for re-use in the process.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the title V operating permit for any affected source required to obtain such a permit;

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is allowed by this subpart; or

(4) Fails to take corrective actions within 48 hours that result in parameter monitoring values being within range.

Electrolyzer means the main component of the mercury cell that consists of an elongated, shallow steel trough that holds a layer of mercury as a flowing cathode. The electrolyzer is enclosed by side panels and a top that suspends metal anodes. In the electrolyzer, brine is fed between a flowing mercury cathode and metal anodes in the presence of electricity to produce chlorine gas and an alkali metal-mercury amalgam (mercury amalgam).

Emission limitation means any emission limit or operating limit.

End box means a component of a mercury cell for transferring materials between the electrolyzer and the decomposer. The inlet end box collects and combines raw materials at the inlet end of the cell, and the outlet end box separates and directs various materials either into the decomposer or out of the cell.

End box ventilation system means all vessels, piping, and equipment that evacuate the head space of each mercury cell end box (and possibly other vessels and equipment) to the atmosphere. The end box ventilation system begins at the end box (and other vessel or equipment which is being evacuated) and terminates at the end box ventilation system vent. The end box ventilation system includes all control devices.

End box ventilation system vent means the discharge point of the end box ventilation system to the atmosphere after all control devices.

Hydrogen leak means hydrogen gas (containing mercury vapor) that is escaping from the decomposer or hydrogen system.

Hydrogen system means all vessels, piping, and equipment that convey a by-product hydrogen stream. The hydrogen system begins at the decomposer and ends at the point just downstream of the last control device. The hydrogen system includes all control devices.

In liquid mercury service means containing or coming in contact with liquid mercury.

Liquid mercury accumulation means one or more liquid mercury droplets, or a pool of liquid mercury, present on the floor or other surface exposed to the atmosphere.

Liquid mercury leak means the liquid mercury that is dripping or otherwise escaping from process equipment.

Liquid mercury spill means a liquid mercury accumulation resulting from a liquid mercury that leaked from process equipment or that dripped during maintenance or handling.

Mercury cell means a device consisting of an electrolyzer and decomposer, with one or more end boxes, a mercury pump, and other components linking the electrolyzer and decomposer.

Mercury cell amalgam seal pot means a compartment through which mercury amalgam passes from an outlet end box to a decomposer.

Mercury cell chlor-alkali plant means all contiguous or adjoining property that is under common control, where mercury cells are used to manufacture product chlorine, product caustic, and by-product hydrogen and where mercury may be recovered from wastes.

Mercury cell chlor-alkali production facility means an affected source consisting of all cell rooms and ancillary operations used in the manufacture of product chlorine, product caustic, and by-product hydrogen at a mercury cell chlor-alkali plant.

Mercury concentration CMS, or mercury concentration continuous monitoring system, means a CMS, as defined in § 63.2, that continuously measures the concentration of mercury.

Mercury-containing wastes means waste materials containing mercury, which are typically classified under Resource Conservation and Recovery Act (RCRA) solid waste designations. K071 wastes are sludges from the brine system. K106 are wastewater treatment sludges. D009 wastes are non-specific mercury-containing wastes, further classified as either debris or nondebris (*i.e.*, cell room sludges and carbon from decomposes).

Mercury pump means a component of a mercury cell for conveying elemental mercury re-created in the decomposer to

the beginning of the mercury cell. A mercury pump is typically found either as an in-line mercury pump (near a mercury suction pot or mercury seal pot) or submerged mercury pump (within a mercury pump tank or mercury pump seal).

Mercury recovery facility means an affected source consisting of all processes and associated operations needed for mercury recovery from wastes at a mercury cell chlor-alkali plant.

Mercury thermal recovery unit means the retort(s) where mercury-containing wastes are heated to volatilize mercury and the mercury recovery/control system (control devices and other equipment) where the retort off-gas is cooled, causing mercury to condense and liquid mercury to be recovered.

Mercury thermal recovery unit vent means the discharge point of the mercury thermal recovery unit to the atmosphere after all recovery/control devices. This term encompasses both oven type vents and non-oven type vents.

Mercury vacuum cleaner means a cleanup device used to draw a liquid mercury spill or accumulation (via suction pressure) into a closed compartment.

Non-oven type mercury thermal recovery unit vent means the discharge point to the atmosphere after all recovery/control devices of a mercury thermal recovery unit in which the retort is either a rotary kiln or single hearth retort.

Open-top container means any container that does not have a tight-fitting cover that keeps its contents from being exposed to the atmosphere.

Oven type mercury thermal recovery unit vent means the discharge point to the atmosphere after all recovery/control devices of a mercury thermal recovery unit in which each retort is a batch oven retort.

Responsible official means responsible official as defined in 40 CFR 70.2.

Retort means a furnace where mercury-containing wastes are heated to drive mercury into the gas phase. The types of retorts used as part of mercury thermal recovery units at mercury cell chlor-alkali plants include batch oven retorts, rotary kilns, and single hearth retorts.

Spalling means fragmentation by chipping.

Sump means a large reservoir or pit for wastewaters (primarily washdown waters).

Trench means a narrow channel or depression built into the length of a cell room floor that leads washdown materials to a drain.

Vent hose means a connection for transporting gases from the mercury cell.

Virgin mercury means mercury that has not been processed in an onsite mercury thermal recovery unit or otherwise recovered from mercury-containing wastes onsite.

Washdown means the act of rinsing a floor or surface with a stream of aqueous liquid to cleanse it of a liquid mercury spill or accumulation, generally by driving it into a trench.

Week means any consecutive seven-day period.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

Tables to Subpart IIIII of Part 63

TABLE 1 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS

[As stated in § 63.8192, you must meet the work practice standards in the following table]

For * * *	You must * * *
1. Cell rooms	a. For new or modified cell rooms, construct each cell room interior using materials that are resistant to absorption of mercury, resistant to corrosion, facilitate the detection of liquid mercury spills or accumulations, and are easy to clean.
	b. Limit access around and beneath mercury cells in each cell room to prevent liquid mercury from being tracked into other areas.
	c. Provide adequate lighting in each cell room to facilitate the detection of liquid mercury spills or accumulations.
	d. Minimize the number of items stored around and beneath cells in each cell room.
2. Mercury cells and electrolyzers	a. Operate and maintain each electrolyzer, decomposer, end box, and mercury pump to minimize leakage of mercury.
	b. Prior to opening an electrolyzer for maintenance, do the following: (1) Complete work that can be done before opening the electrolyzer in order to minimize the time required to complete maintenance when the electrolyzer is open; (2) fill the electrolyzer with an aqueous liquid, when possible; (3) allow the electrolyzer to cool before opening; and (4) schedule and staff maintenance of the electrolyzer to minimize the time the electrolyzer is open.
	c. When the electrolyzer top is raised and before moving the top and anodes, thoroughly flush all visible mercury from the top and the anodes with an aqueous liquid, when possible.
	d. While an electrolyzer is open, keep the bottom covered with an aqueous liquid or maintain a continuous flow of aqueous liquid, when possible.
	e. During an electrolyzer side panel change, take measures to ensure an aqueous liquid covers or flows over the bottom, when possible.
	f. Each time an electrolyzer is opened, inspect and replace components, as appropriate.
	g. If you step into an electrolyzer bottom, either remove all visible mercury from your footwear or replace them immediately after stepping out of the electrolyzer.
	h. If an electrolyzer is disassembled for overhaul maintenance or for any other reason, chemically clean the bed plate or thoroughly flush it with an aqueous liquid.
	i. Before transporting each electrolyzer part to another work area, remove all visible mercury from the part or contain the part to prevent mercury from dripping during transport.
	j. After completing maintenance on an electrolyzer, check any mercury piping flanges that were opened for liquid mercury leaks.
	k. If a liquid mercury spill occurs during any maintenance activity on an electrolyzer, clean it up in accordance with the requirements in Table 3 to this subpart.

TABLE 1 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS—Continued

[As stated in § 63.8192, you must meet the work practice standards in the following table]

For * * *	You must * * *
3. Vessels in liquid mercury service	If you replace a vessel containing mercury that is intended to trap and collect mercury after December 19, 2003, replace it with a vessel that has a cone shaped bottom with a drain valve or other design that readily facilitates mercury collection.
4. Piping and process lines in liquid mercury service.	a. To prevent mercury buildup after December 19, 2003, equip each new process line and piping system with smooth interiors and adequate low point drains or mercury knock-out pots to avoid liquid mercury buildup within the pipe and to facilitate mercury collection and recovery.
5. Cell room floors	a. Maintain a coating on cell room floors that is resistant to absorption of mercury and that facilitates the detection of liquid mercury spills or accumulations. b. Maintain cell room floors such that they are smooth and free of cracking and spalling. c. Maintain the cell room floor to prevent mercury accumulation in the corners. d. Maintain a layer of aqueous liquid on liquid mercury contained in trenches or drains and replenish the aqueous layer at least once per day. e. Keep the cell room floor clean and free of debris. f. If you step into a liquid mercury spill or accumulation, either remove all visible mercury from your footwear or replace your footwear immediately.
6. End boxes	a. Either equip each end box with a fixed cover that is leak tight, or route the end box head space to an end box ventilation system. b. For each end box ventilation system: maintain a flowof aqueous liquid over the liquid mercury in the end box and maintain the temperature of the aqueous liquid below its boiling point, maintain a negative pressure in the end box ventilation system, and maintain the end box ventilation system in good condition. c. Maintain each end box cover in good condition and keep the end box closed when the cell is in service and when liquid mercury is flowing down the cell, except when operation or maintenance activities require short-term access. d. Keep all bolts and C-clamps used to hold the covers in place when the cell is in service and when liquid mercury is flowing down the cell. e. Maintain each access port stopper in an end box cover in good sealing condition and keep each end box access port closed when the cell is in service and when liquid mercury is flowing down the cell.
7. Decomposers	a. Maintain each decomposer cover in good condition and keep each decomposer closed and sealed, except when maintenance activities require the cover to be removed. b. Maintain connections between the decomposer and the corresponding cell components, hydrogen system piping, and caustic system piping in good condition and keep the connections closed/tight, except when maintenance activities require opening/loosening these connections. c. Keep each mercury cell amalgam seal pot closed and sealed, except when operation or maintenance activities require short-term access. d. Prior to opening a decomposer, do the following: fill the decomposer with an aqueous liquid or drain the decomposer liquid mercury into a container that meets requirements in Table 1, Item 9 or 10, allow the decomposer to cool before opening, and complete work that can be done before opening the decomposer. e. Take precautions to avoid mercury spills when changing graphite grids or balls in horizontal decomposers or graphite packing in vertical decomposers. If a spill occurs, you must clean it up in accordance with the requirements in Table 3 to this subpart. f. After each maintenance activity, use an appropriate technique (Table 6 to this subpart) to check for hydrogen leaks. g. Before transporting any internal part from the decomposer (such as the graphite basket) to another work area, remove all visible mercury from the part or contain the part to prevent mercury from dripping during transport. h. Store carbon from decomposers in accordance with the requirements in 40 CFR part 265, subparts I and CC, until the carbon is treated or is disposed.
8. Submerged mercury pumps	a. Provide a vapor outlet connection from each submerged pump to an end box ventilation system. The connection must be maintained under negative pressure. b. Keep each mercury pump tank closed, except when maintenance or operation activities require the cover to be removed. c. Maintain a flow of aqueous liquid over the liquid mercury in each mercury pump tank and maintain the aqueous liquid at a temperature below its boiling point.
9. Open-top containers holding liquid mercury.	Maintain a layer of aqueous liquid over liquid mercury in each open-top container. Replenish the aqueous layer at least once per day and, when necessitated by operating procedures or observation, collect the liquid mercury from the container in accordance with the requirements in Table 4 to this subpart.
10. Closed containers used to store liquid mercury.	a. Store liquid mercury in containers with tight fitting covers. b. Maintain the seals on the covers in good condition. c. Keep each container securely closed when mercury is not being added to, or removed from, the container.
11. Caustic systems	a. Maintain the seal between each caustic basket cover and caustic basket by using gaskets and other appropriate material. b. Do not allow solids and liquids collected from back-flushing primary caustic filters to contact floors or run into open trenches. c. Collect solids and liquids from back-flushing each primary caustic filter and collect these mercury-containing wastes in process vessels or in accordance with the requirements in 40 CFR part 265, subparts I and CC.

TABLE 1 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS—Continued

[As stated in § 63.8192, you must meet the work practice standards in the following table]

For * * *	You must * * *
12. Hydrogen systems	d. Keep each caustic basket closed and sealed, except when operation or maintenance activities require short term access. a. Collect drips from each hydrogen seal pot and compressor seal in containers meeting the requirements in this table for open containers. These drips should not be allowed to run on the floor or in open trenches. b. Minimize purging of hydrogen from a decomposer into the cell room by either sweeping the decomposer with an inert gas or by routing the hydrogen to the hydrogen system. c. Maintain hydrogen piping gaskets in good condition. d. After any maintenance activities, use an appropriatetechnique (Table 6 to this subpart) to check all hydrogen piping flanges that were opened for hydrogen leaks.

TABLE 2 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED INSPECTIONS

[As stated in § 63.8192, you must meet the work practice standards in the following table]

You must inspect * . *	At least once each * * *	And if you find * * *	You must * * *
1. Each vent hose on each mercury cell	Half day	A leaking vent hose	Take action immediately to correct the leak.
2. Each open-top container holding liquid mercury.	Half day	Liquid mercury that is not covered by an aqueous liquid.	Take action immediately to cover the liquid mercury with an aqueous liquid.
3. Each end box	Half day	a. An end box cover not securely in place.	Take action immediately to put the end box cover securely in place.
		b. An end box stopper not securely in place.	Take action immediately to put the end box stopper securely in place.
		c. Liquid mercury in an end box that is not covered by an aqueous liquid at a temperature below boiling.	Take action immediately to cover the liquid mercury with an aqueous liquid.
4. Each mercury amalgam seal pot	Half day	A seal pot cover that is not securely in place.	Take action immediately to put the seal pot cover securely in place.
5. Each mercury seal pot	Half day	A mercury seal pot stopper not securely in place.	Take action immediately to put the mercury seal pot stopper securely in place.
6. Cell room floors	Month	Cracks, spalling, or other deficiencies that could cause liquid mercury to become trapped.	Repair the crack, spalling, or other deficiency within 1 month from the time you identify the deficiency.
7. Pillars and beams	6 months	Cracks, spalling, or other deficiencies that could cause liquid mercury to become trapped.	Repair the crack, spalling, or other deficiency within 1 month from the time you identify the deficiency.
8. Each caustic basket	Half day	A caustic basket cover that is not securely in place.	Take action immediately to put the caustic basket cover securely in place.
9. All equipment and piping in the caustic system.	Day	Equipment that is leaking caustic	Initiate repair of the leaking equipment within 72 hours from the time that you identify the caustic leak.
10. All floors and other surfaces where liquid mercury could accumulate in cell rooms and other production facilities and in mercury recovery facilities.	Half day	A liquid mercury spill or accumulation	Take the required action specified in Table 3 to this subpart.
11. Each electrolyzer bottom, electrolyzer side panel, end box, mercury amalgam seal pot, decomposer, mercury pump, and hydrogen cooler, and all other vessels, piping, and equipment in liquid mercury service in the cell room.	Day	Equipment that is leaking liquid mercury	Take the required action specified in Table 3 to this subpart.
12. Each decomposer and all hydrogen piping up to the hydrogen header.	Half day	Equipment that is leaking hydrogen and/or mercury vapor.	Take the required action specified in Table 3 to this subpart.
13. All equipment in the hydrogen system from the start of the header to the last control device.	3 months	Equipment that is leaking hydrogen and/or mercury vapor.	Take the required action specified in Table 3 to this subpart.

TABLE 3 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED ACTIONS FOR LIQUID MERCURY SPILLS AND ACCUMULATIONS AND HYDROGEN AND MERCURY VAPOR LEAKS

[As stated in § 63.8192, you must meet the work practice standards in the following table]

During a required inspection or at any other time, If you find * * *	You must * * *
1. A liquid mercury spill or accumulation	a. Initiate clean up of the liquid mercury spill or accumulation as soon as possible, but no later than 1 hour from the time you detect it. b. Clean up liquid mercury using a mercury vacuum cleaner or by using an alternative method. If you use an alternative method to clean up liquid mercury, you must submit a description of the method to the Administrator in your Notification of Compliance Status report. c. If you use a mercury vacuum cleaner, the vacuum cleaner must be designed to prevent generation of airborne mercury; you must cap the ends of hoses after each use; and after vacuuming, you must wash down the area. d. Inspect all equipment in liquid mercury service in the surrounding area to identify the source of the liquid mercury within 1 hour from the time you detect the liquid mercury spill or accumulation. e. If you identify leaking equipment as the source of the spill or accumulation, contain the dripping mercury, stop the leak, and repair the leaking equipment as specified below. f. If you cannot identify the source of the liquid mercury spill or accumulation, re-inspect the area within 6 hours of the time you detected the liquid mercury spill or accumulation, or within 6 hours of the last inspection of the area.
2. Equipment that is leaking liquid mercury	a. Contain the liquid mercury dripping from the leaking equipment by placing a container under the leak within 30 minutes from the time you identify the liquid mercury leak. b. The container must meet the requirement for open-top containers in Table 1 to this subpart. c. Make a first attempt at stopping the leak within 1 hour from the time you identify the liquid mercury leak. d. Stop the leak and repair the leaking equipment within 4 hours from the time you identify the liquid mercury leak. e. You can delay repair of equipment leaking liquid mercury if you either isolate the leaking equipment from the process so that it does not remain in mercury service; or determine that you cannot repair the leaking equipment without taking the cell off line, provided that you contain the dripping mercury at all times as described above, and take the cell off line as soon as practicable, but no later than 48 hours from the time you identify the leaking equipment. You cannot place the cell back into service until the leaking equipment is repaired.
3. A decomposer or hydrogen system piping up to the hydrogen header that is leaking hydrogen and/or mercury vapor.	a. Make a first attempt at stopping the leak within 1 hour from the time you identify the hydrogen and/or mercury vapor leak. b. Stop the leak and repair the leaking equipment within 4 hours from the time you identify the hydrogen and/or mercury vapor leak. c. You can delay repair of a equipment leaking hydrogen and/or mercury vapor if you isolate the leaking equipment or take the cell off line until you repair the leaking equipment.
4. Equipment in the hydrogen system, from the start of the hydrogen header to the last control device, that is leaking hydrogen and/or mercury vapor.	a. Make a first attempt at stopping the leak within 4 hours from the time you identify the hydrogen and/or mercury vapor leak. b. Stop the leak and repair the header within 24 hours from the time you identify the hydrogen and/or mercury vapor leak. c. You can delay repair of equipment leaking hydrogen and/or mercury vapor if you isolate the leaking equipment.

TABLE 4 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIREMENTS FOR MERCURY LIQUID COLLECTION

[As stated in § 63.8192, you must meet the work practice standards in the following table]

You must collect liquid mercury from * * *	At the following intervals	When collecting the mercury, you must meet these requirements		
1. Open-top containers	a. At least once each 72 hours.	i. If you spill liquid mercury during collection or transport, you must take the action specified in Table 3 to this subpart for liquid mercury spills and accumulations.	ii. From the time that you collect liquid mercury into a temporary container until the time that you store the liquid mercury, you must keep it covered by an aqueous liquid.	iii. Within 4 hours from the time you‘ collect the liquid mercury, you must transfer it from each temporary container to a storage container that meets the specifications in Table 1 to this subpart.
2. Vessels, low point drains, mercury knock-out pots, and other closed mercury collection points.	a. At least once each week.	See 1.a.i through iii above.		

TABLE 4 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIREMENTS FOR MERCURY LIQUID COLLECTION—Continued

[As stated in § 63.8192, you must meet the work practice standards in the following table]

3. All other equipment	a. Whenever maintenance activities require the opening of the equipment.	See 1.a.i. through iii above.

TABLE 5 TO SUBPART IIIII.—REQUIRED ELEMENTS OF FLOOR-LEVEL MERCURY VAPOR MEASUREMENT AND CELL ROOM MONITORING PLANS

[Your Floor-Level Mercury Vapor Measurement Plan required by § 63.8192(d) and Cell Room Monitoring Plan required by § 63.8192(g) must contain the elements listed in the following table]

You must specify in your plan * * *	Additional requirements
Floor-Level Mercury Vapor Measurement Plan	
1. Locations in the cell room where you will measure the level of mercury vapor.	The locations must be representative of the entire cell room floor area. At a minimum you must measure the level of mercury vapor above mercury-containing cell room equipment, as well as areas around the cells, decomposes, or other mercury-containing equipment.
2. Equipment or sampling and analytical methods that you will use to measure the level of mercury vapor.	If an instrument or other equipment is used, the plan must include manufacturer specifications and calibration procedures. The plan must also include a description of how you will ensure that the instrument will be calibrated and maintained according to manufacturer specifications.
3. Measurement frequency	Measurements must take place at least once each half day.
4. Number of measurements	At least three readings must be taken at each sample location and the average of these readings must be recorded.
5. A floor-level mercury concentration action level	The action level may not be higher than 0.05 mg/m^3.
Cell Room Monitoring Plan	
1. Details of your mercury monitoring system.	
2. How representative sampling will be conducted	Include some pre-plan measurements to demonstrate the profile of mercury concentration in the cell room and how the selected sampling locations ensure conducted representativeness.
3. Quality assurance/quality control procedures for your mercury monitoring system.	Include a description of how you will keep records or other means to demonstrate that the system is operating properly.
4. Your action level	Include the background data used to establish your level.

TABLE 6 TO SUBPART IIIII OF PART 63.—EXAMPLES OF TECHNIQUES FOR EQUIPMENT PROBLEM IDENTIFICATION, LEAK DETECTION AND MERCURY VAPOR MEASUREMENTS

[As stated in Tables 1 and 2 of Subpart IIIII, examples of techniques for equipment problem identification, leak detection and mercury vapor measurements can be found in the following table]

To detect * * *	You could use * * *	Principle of detection * * *
1. Leaking vent hoses; liquid mercury that is not covered by an aqueous liquid in open-top containers or end boxes; end box covers or stoppers, amalgam seal pot stoppers, or caustic basket covers not securely in place; cracks or spalling in cell room floors, pillars, or beams; caustic leaks; liquid mercury accumulations or spills; and equipment that is leaking liquid mercury.	Visual inspections	
2. Equipment that is leaking hydrogen and/or mercury vapor during inspections required by Table 2 to this subpart.	a. Auditory and visual inspections	
	b. Portable mercury vapor analyzer—ultraviolet light absorption detector.	A sample of gas is drawn through a detection cell where ultraviolet light at 253.7 nanometers (nm) is directed perpendicularly through the sample toward a photodetector. Elemental mercury absorbs the incident light in proportion to its concentration in the air stream.
	c. Portable mercury vapor analyzer—gold film amalgamation detector.	A sample of gas is drawn through a detection cell containing a gold film detector. Elemental mercury amalgamates with the gold film, changing the resistance of the detector in proportion to the mercury concentration in the air sample.

TABLE 6 TO SUBPART IIIII OF PART 63.—EXAMPLES OF TECHNIQUES FOR EQUIPMENT PROBLEM IDENTIFICATION, LEAK DETECTION AND MERCURY VAPOR MEASUREMENTS—Continued

[As stated in Tables 1 and 2 of Subpart IIIII, examples of techniques for equipment problem identification, leak detection and mercury vapor measurements can be found in the following table]

To detect * * *	You could use * * *	Principle of detection * * *
	d. Portable short-wave ultraviolet light, fluorescent background—visual indication.	Ultraviolet light is directed toward a fluorescent background positioned behind a suspected source of mercury emissions. Elemental mercury vapor absorbs the ultraviolet light, projecting a dark shadow image on the fluorescent background.
	e. Portable combustible gas meter.	
3. Level of mercury vapor in the cell room and other areas.	a. Portable mercury vapor analyzer—ultraviolet light absorption detector.	See Item 2.b.
	b. Portable mercury vapor analyzer—gold film amalgamation detector.	See Item 2.c.
	c. Permanganate impingement	A known volume of gas sample is absorbed in potassium permanganate solution. Elemental mercury in the solution is determined using a cold vapor adsorption analyzer, and the concentration of mercury in the gas sample is calculated.

TABLE 7 TO SUBPART IIIII OF PART 63.—REQUIRED ELEMENTS OF WASHDOWN PLANS

[As stated in § 63.8192, your written washdown plan must address the elements contained in the following table]

For each of the following areas * * *	You must establish the following as part of your plan * * *
1. Center aisles of cell rooms	A description of the manner of washdown of the area, and the washdown frequency for the area.
2. Electrolyzers	
3. End boxes and areas under end boxes	
4. Decomposers and areas under decomposers	
5. Caustic baskets and areas around caustic baskets	
6. Hydrogen system piping	
7. Basement floor of cell rooms	
8. Tanks	
9. Pillars and beams in cell rooms	
10. Mercury cell repair areas	
11. Maintenance shop areas	
12. Work tables	
13. Mercury thermal recovery units	
14. Storage areas for mercury-containing wastes	

TABLE 8 TO SUBPART IIIII OF PART 63.—REQUIREMENTS FOR CELL ROOM MONITORING PROGRAM

[As stated in § 63.8192(g)(1), your mercury monitoring system must meet the requirements contained in the following table]

If you utilize an * * *	Your * * *	Must * * *
1. Extractive cold vapor spectroscopy system ..	a. Mercury vapor analyzer	Be capable of continuously monitoring the elemental mercury concentration with a detection level at least two times lower than the baseline mercury concentration in the cell room.
	b. Sampling system	Obtain measurements at three or more locations along the center aisle of the cell room at a height sufficient to ensure that sample is representative of the entire cell room. One sampling location must be above the midpoint of the center aisle, and the other two an equidistance between the midpoint and the end of the cells.
2. Open path differential optical absorption spectroscopy system.	a. Mercury vapor analyzer	Be capable of continuously monitoring the elemental mercury concentration with a detection level at least two times lower than the baseline mercury concentration in the cell room.
	b. Path	Be directed along the center aisle at a height sufficient to ensure that the sample is representative of the entire cell room.

TABLE 9 TO SUBPART IIIII OF PART 63.—REQUIRED RECORDS FOR WORK PRACTICE STANDARDS

[As stated in § 63.8256(c), you must keep the records (related to the work practice standards) specified in the following table]

For each * * *	You must record the following information * * *
1. Inspection required by Table 2 to this subpart	Date and time the inspection was conducted.
2. Situation found during an inspection required by Table 2 to this subpart: leaking vent hose; open-top container where liquid mercury is not covered by an aqueous liquid; end box cover that is not securely in place; end box stopper that is not securely in place; end box where liquid mercury is not covered by an aqueous liquid at a temperature below boiling; seal pot cover that is not securely in place; open or mercury seal pot stopper that is not securely in place; crack, spalling, or other deficiency in a cell room floor, pillar, or beam that could cause liquid mercury to become trapped; or caustic basket that is not securely in place.	a. Description of the condition. b. Location of the condition. c. Date and time you identify the condition. d. Description of the corrective action taken. e. Date and time you successfully complete the corrective action.
3. Caustic leak during an inspection required by Table 2 to this subpart	a. Location of the leak. b. Date and time you identify the leak. c. Date and time you successfully stop the leak and repair the leaking equipment.
4. Liquid mercury spill or accumulation identified during an inspection required by Table 2 to this subpart or at any other time.	a. Location of the liquid mercury spill or accumulation. b. Estimate of the weight of liquid mercury. c. Date and time you detect the liquid mercury spill or accumulation. d. Method you use to clean up the liquid mercury spill or accumulation. e. Date and time when you clean up the liquid mercury spill or accumulation. f. Source of the liquid mercury spill or accumulation. g. If the source of the liquid mercury spill or accumulation is not identified, the time when you reinspect the area.
5. Liquid mercury leak or hydrogen leak identified during an inspection required by Table 2 to this subpart or at any other time.	a. Location of the leak. b. Date and time you identify the leak. c. If the leak is a liquid mercury leak, the date and time that you successfully contain the dripping liquid mercury. d. Date and time you first attempt to stop the leak. e. Date and time you successfully stop the leak and repair the leaking equipment. f. If you take a cell off line or isolate the leaking equipment, the date and time you take the cell off line or isolate the leaking equipment, and the date and time you put the cell or isolated equipment back into service.
6. Occasion for which it is not possible to perform the design, operation and maintenance procedures required by Item 2 of Table 1 to this subpart.	a. Reason for not being able to perform each procedure determined to be not possible. b. Actions taken to reduce or prevent mercury emissions, in lieu of the requirements in Table 1 to this subpart.

TABLE 10 TO SUBPART IIIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIIII

[As stated in § 63.8262, you must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applies to Subpart IIIII	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction/Reconstruction	Yes.	
§ 63.6(a)–(g), (i), (j)	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(h)	Compliance with Opacity and Visible Emission Standards.	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.7(a)(1), (b)–(h)	Performance Testing Requirements.	Yes	Subpart IIIII specifies additional requirements related to site-specific test plans and the conduct of performance tests.
§ 63.7(a)(2)	Applicability and Performance Test Dates.	No	Subpart IIIII requires the performance test to be performed on the compliance date.
§ 63.8(a)(1), (a)(3); (b); (c)(1)–(4), (6)–(8); (d); (e); and (f)(1)–(5).	Monitoring Requirements	Yes.	
§ 63.8(a)(2)	Continuous Monitoring System (CMS) Requirements.	No	Subpart IIIII requires a site-specific monitoring plan in lieu of a promulgated performance specification for a mercury concentration CMS.

TABLE 10 TO SUBPART IIIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIIII—Continued

[As stated in § 63.8262, you must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applies to Subpart IIIII	Explanation
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Subpart IIIII does not require flares.
§ 63.8(c)(5)	COMS Minimum Procedures	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Subpart IIIII does not require CEMS.
§ 63.8(g)	Data Reduction	No	Subpart IIIII specifies mercury concentration CMS data reduction requirements.
§ 63.9(a)–(e), (g)–(j)	Notification Requirements	Yes.	
§ 63.9(f)	Notification of VE/Opacity Test	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.10(a); (b)(1); (b)(2)(i)–(xii), (xiv); (b)(3); (c);(d)(1)–(2), (4)–(5); (e); (f).	Recordkeeping/Reporting	Yes.	
§ 63.10(b)(2)(xiii)	CMS Records for RATA Alternative.	No	Subpart IIIII does not require CEMS.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.11	Flares	No	Subpart IIIII does not require flares.
§ 63.12	Delegation	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information	Yes.	

[FR Doc. 03–22926 Filed 12–18;–03; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
December 19, 2003

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Chlorine and Hydrochloric Acid Emissions from Chlorine Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0016, FRL–7554–6]

RIN 2060–AK38

National Emission Standards for Hazardous Air Pollutants: Chlorine and Hydrochloric Acid Emissions From Chlorine Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final decision to delete subcategory.

SUMMARY: This final action deletes the subcategory of sources that do not utilize mercury cells to produce chlorine and caustic. We have determined that this non-mercury cell chlorine production subcategory should be deleted because chlorine and hydrochloric acid (HCl), the only hazardous air pollutants (HAP) emitted, are not carcinogenic, have well-defined health thresholds, and chlorine and HCl air emissions from each non-mercury cell chlorine subcategory source do not exceed a level which is adequate to protect public health with an ample margin of safety. In addition, the emissions of chlorine and HCl will not result in any adverse environmental effects. This final action does not address chlorine and HCl emissions from mercury cell chlor-alkali plants. The final rulemaking for the mercury cell chlor-alkali plant subcategory is contained elsewhere in this issue of the **Federal Register**.

EFFECTIVE DATE: December 19, 2003.

ADDRESSES: *Docket.* We have established an official public docket for this action under Docket ID No. OAR–2002–0016, A–2002–09, A–2000–32, and OAR–2002–0017 available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. Docket No. A–2002–09 or OAR–2002–0016 contains supporting information used in developing the proposed and final action for the non-mercury cell subcategory of the chlorine production source category addressed in this action. The docket is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Iliam Rosario, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5308, facsimile: (919) 541–5600, electronic mail address: rosario.iliam@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket. The official public docket consists of the documents specifically referenced in this final action, any public comments received, and other information related to this final action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing. 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 Air Docket is (202) 566–1742.

Electronic Docket Access. You may access this final action electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled ''Docket.'' Once in the system, select ''search,'' then key in the appropriate docket identification number.

Judicial Review. Under CAA section 307(b), judicial review of the final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before February 17, 2004. Only those objections to the final action which were raised with reasonable specificity during the period for public comment may be raised during judicial review.

Affected entities. Entities potentially affected by this action include facilities engaged in the production of chlorine using non-mercury cells, for example, diaphragm cells and membrane cells. Affected categories and entities include those sources listed in the primary Standard Industrial Classification code 2812 or North American Information Classification System code 325181.

This description is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final action. If you have questions regarding the applicability of this final action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

World Wide Web Information. In addition to being available in the docket, an electronic copy of today's final action will also be available through EPA's World Wide Web site. Following signature, a copy of this final action will be posted on our policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.* The web site provides information and technology exchange in various areas of air pollution control. If more information regarding the web site is needed, call our web site help line at (919) 541–5384.

Outline. The information presented in this preamble is organized as follows:

I. Background
- A. What Is the Source of Authority for This Final Action?
- B. What Is the Source Category?
- C. How Did the Public Participate in Developing This Final Action?

II. Summary of Final Action

III. Summary of Major Comments
- A. What Issues Were Raised Regarding the Statutory Authority for This Final Action?
- B. What Issues Were Raised Related to the Potential Overlap With the HCl Production NESHAP?
- C. What Issues Were Raised Regarding the Risk Assessment That Forms the Technical Basis for This Final Action?

IV. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Congressional Review Act

I. Background

A. What Are the Sources of Authority for This Final Action?

Section 112 of the Clean Air Act (CAA) contains our authorities for reducing emissions of HAP. Section 112(c)(1) of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish national emission standards for hazardous air pollutants (NESHAP) for the listed source categories and subcategories. Section 112(c)(9) of the CAA contains provisions that allow the deletion of source categories listed under CAA section 112(c)(1) provided that certain conditions are met. For chemicals that may result in cancer in humans, the condition is that no source in the category emit HAP in quantities that result in a lifetime cancer risk of greater than one in a million to the individual in the population who is most exposed. For chemicals that result in adverse health effects other than cancer or adverse environmental effects, the conditions are that no source in the category emit HAP that exceed a level ''adequate to protect public health with an ample margin of safety'' and that no source emit HAP in quantities to cause adverse environmental effects.

Section 112(d) of the CAA requires us to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of HAP listed pursuant to CAA section 112(c). Section 112(d)(2) of the CAA specifies that emission standards promulgated under the section shall require the maximum degree of reductions in emissions of the HAP subject to CAA section 112 that are deemed achievable considering cost and any non-air quality health and environmental impacts and energy requirements.

Each of the NESHAP established reflects the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as maximum achievable control technology (MACT).

The CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. For pollutants for which a threshold has been established, CAA section 112(d)(4) allows us ''. . . to consider such threshold level, with an ample margin of safety, when establishing emissions standards. . . .''

B. What Is the Source Category?

The chlorine production source category was initially listed as a category of major sources of HAP pursuant to section 112(c)(1) of the CAA on July 16, 1992 (57 FR 31576). At the time of the initial listing, we defined the chlorine production source category as follows: ''The Chlorine Production Source Category includes any facility engaged in the production of chlorine. The category includes, but is not limited to, facilities producing chlorine by the following production methods: diaphragm cell, mercury cell, membrane cell, hybrid fuel cell, Downs cell, potash manufacture, hydrochloric acid decomposition, nitrosyl chloride process, nitric acid/salt process, Kel-Chlor process, and sodium chloride/sulfuric acid process.''

In our subsequent analysis of the chlorine production source category, we did not identify any facilities that produce chlorine using hybrid fuel cells, the nitrosyl chloride process, the Kel-Chlor process, the sodium chloride/sulfuric acid process, or as a by-product from potash manufacturing. The majority of the source category is made up of chlor-alkali plants that produce chlorine and caustic (sodium hydroxide) using mercury cells, diaphragm cells, or membrane cells. We also identified operating plants that produce chlorine as a by-product: one from the production of sodium metal in Down cells, another from the production of potassium nitrate fertilizer that uses the nitric acid/salt process, and a third that produces chlorine as a by-product from primary magnesium refining (magnesium refining is a separately listed source category, and is being addressed on its own in a separate rulemaking). In addition, at a site where a membrane cell process is located, we have identified a process that produces chlorine through the decomposition of HCl. Our analysis shows that the only HAP emitted from sources within the chlorine production source category are chlorine, HCl, and mercury, and mercury is only emitted from mercury cell chlor-alkali plants.

Because of the differences in the production methods and the HAP emitted, we decided to divide the chlorine production category into two subcategories: (1) Mercury cell chlor-alkali plants, and (2) chlorine production plants that do not rely upon mercury cells for chlorine production (diaphragm cell chlor-alkali plants, membrane cell chlor-alkali plants, etc). Thus, on July 3, 2002, we issued different proposals to address the emissions of mercury from the mercury cell chlorine production subcategory sources (67 FR 44672) and the emissions of chlorine and HCl from both the non-mercury cell chlorine production subcategory and the mercury cell chlorine production subcategory sources (67 FR 44713). This final action deletes the non-mercury cell chlorine production subcategory. Elsewhere in today's **Federal Register**, we are issuing a final rulemaking to regulate mercury emissions for mercury cell chlorine production subcategory sources to regulate mercury emissions, and we are utilizing our authority under CAA section 112(d)(4) not to regulate chlorine and HCl emissions from the mercury cell chlorine production source category.

In the non-mercury cell chlorine production subcategory, we identified 20 major source plant sites where diaphragm or membrane cell chlor-alkali chlorine production plants are located. None of the non-mercury cell chlorine production processes at these sites emit HAP greater than 10 tons per year (tpy) of one HAP or 25 tpy of all HAP (that is, they would not be major source if they were not collocated with other HAP emission sources), but the total emissions from the entire contiguous plant site make each a major source.

C. How Did the Public Participate in Developing This Final Action?

Prior to proposal, we met with industry representatives to discuss the data and information used to develop the proposed action. In addition, these and other potential stakeholders, including equipment vendors and environmental groups, had opportunity to comment on the proposed action.

The proposed action was published in the **Federal Register** on July 3, 2002 (67 FR 44713). The preamble to the proposed action discussed the availability of technical support documents, which described in detail the information gathered during the standards development process. Public comments were solicited at proposal.

We received eight public comment letters on the proposed action. The commenters represent the following affiliations: industry representatives, governmental entities, and environmental groups during the public comment. In the post-proposal period, we had discussions with commenters and other stakeholders to clarify comments and to assist in our analysis of the comments. Records of these contacts are found in Docket No. A–2002–09 or OAR–2002–0016.

II. Summary of Final Action

This final action deletes the subcategory of the Chlorine Production Source Category for facilities that do not utilize mercury cells to produce chlorine and caustic. This action is

being made under our authority in CAA section 112(c)(9)(B)(ii). This final action does not impact the other subcategory of the Chlorine Production Source Category: Mercury Cell Chlor-Alkali Plants. A final rulemaking addressing the Mercury Cell Chlor-alkali Plant subcategory is contained in a separate section of today's **Federal Register**.

III. Summary of Major Comments

On July 3, 2002 (67 FR 44713), we proposed not to regulate chlorine and HCl emissions from all chlorine production processes (mercury and non-mercury cell) under the authority of CAA section 112(d)(4). We based that decision on our determination that no further control is necessary because chlorine and HCl are health threshold pollutants, and chlorine and HCl levels emitted from chlorine production processes are below their threshold values within an ample margin of safety, and they do not result in adverse environmental effects.

For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the ''National Standards for Hazardous Air Pollutants: Chlorine and Hydrochloric Acid Emissions from Chlorine Production: Summary of Public Comments and Responses'' in Docket No. A–2002–09 or OAR–2002–0016.

A. What Issues Were Raised Regarding the Statutory Authority for This Final Action?

Comment: Several comments were received related to our decision not to regulate chlorine and HCl emissions from chlorine production under the authority of CAA section 112(d)(4). Some commenters supported that decision and believed the interpretation of our authority under CAA section 112(d)(4) was appropriate. In contrast, other commenters disagreed with EPA's interpretation of CAA section 112(d)(4). Some of the commenters believed that EPA should use its authority under CAA section 112(c)(9)(B)(ii).

Several commenters supported the decision not to regulate chlorine and HCl emissions from chlorine production plants under the authority of CAA section 112(d)(4). One commenter stated that EPA conducted an appropriate analysis to determine that human exposures from ambient concentrations are well below threshold values with an ample margin of safety. According to another commenter, any further regulation of chlorine and HCl emissions from the chlorine production industry would have no environmental benefits, but would result in costs for monitoring, recordkeeping, and reporting efforts to certify compliance with any requirements. The commenter was concerned that a rulemaking would also stretch EPA's limited resources in monitoring for compliance. Three commenters stated that EPA's interpretation of their authority under CAA section 112(d)(4) was supported by the legislative history, which emphasizes that Congress included section 112(d)(4) in the CAA to prevent unnecessary regulation of source categories. The commenter agreed that under CAA section 112(d)(4), once EPA establishes that a pollutant has a health threshold and that exposure to that pollutant's emissions are below the health threshold, EPA should refrain from setting MACT standards for that pollutant. The commenter further suggested that EPA should use CAA section 112(d)(4) whenever setting emission standards under CAA section 112(d).

Three commenters disagreed with EPA's interpretation of CAA section 112(d)(4). They did not believe that CAA section 112(d)(4) could be used as an alternative to setting MACT standards under CAA section 112(d)(3). One commenter noted that the phrase ''in lieu of'' was not included in the CAA section 112(d)(4) provisions, and that its absence was intentional. In support of their claim, the commenter pointed to CAA section 112(d)(5), which does contain the phrase ''in lieu of.'' The commenter interpreted CAA section 112(d)(4) to mean that health based thresholds can be considered when establishing the degree of MACT requirements, but not in place of the requirement to establish a MACT floor pursuant to CAA section 112(d)(3).

The commenter also pointed to the provisions of CAA section 112(c)(2) which require the Administrator to establish NESHAP for listed source categories and subcategories. The commenter was concerned that EPA evaluated emissions from chlorine production plants and concluded that since they do not pose a threat to human health and the environment, the Administrator is relieved of her responsibilities to establish a MACT standard. The commenter maintained that this position is not supported by CAA section 112(c)(2).

The commenter also referred to CAA section 112(d)(1) which states ''. . . the Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) of this section. . . .'' Thus, the commenter stated that EPA did not have the authority to ''make a determination of no regulation for a listed source category or pollutant.''

Finally, the commenter referred to CAA section 112(d)(3), which contains the MACT floor provisions. According to the commenter, the intent of the NESHAP program is to develop a MACT floor, and EPA is not fulfilling the requirements of the CAA by not performing such an analysis. The commenter stated that a majority of facilities identified in the analysis have adequate controls due to State regulations and these controls should be incorporated into the MACT floor evaluation. The commenter was particularly concerned that by not developing a MACT floor, no new source MACT standards were created. The commenter requested that EPA perform a MACT floor analysis, and develop a NESHAP for new sources.

Two commenters that stated that they believe that EPA should support their decision not to regulate the chlorine production source category by citing the provisions of CAA section 112(c)(9)(B)(ii) in addition to the provisions of CAA section 112(d)(4). The commenters stated that the evaluation performed by EPA would also be sufficient for deleting sources under CAA section 112(c)(9)(B)(ii), and that EPA's proposal to not regulate chlorine production is similar to deleting a subcategory of the chlorine production source category (*i.e.*, all chlorine production sources other than those using the mercury-cell chlor-alkali production process). Therefore, in addition to using the authority under CAA section 112(d)(4), the commenters suggested that EPA delete the subcategory using the authority under CAA section 112(c)(9)(B)(ii) to avoid any uncertainty over the use of its authority under CAA section 112(d)(4).

Response: The chlorine production source category was initially listed as a category of major sources of HAP pursuant to section 112(c)(1) of the CAA on July 16, 1992 (57 FR 31576). Our analysis shows that the only HAP emitted in significant quantities from sources within the chlorine production source category are chlorine, HCl, and mercury, and mercury is only emitted from mercury cell chlor-alkali plants. Because of the differences in the production methods and the HAP emitted, we decided to divide the chlorine production category into two subcategories: (1) mercury cell chlor-alkali plants, and (2) chlorine production plants that do not rely upon mercury cells for chlorine production (diaphragm cell chlor-alkali plants,

membrane cell chlor-alkali plants, etc). Thus, on July 3, 2002, we issued different proposals to address the emissions of mercury from the mercury cell chlorine production subcategory sources (67 FR 44672) and the emissions of chlorine and HCl from both the non-mercury cell chlorine production subcategory and the mercury cell chlorine production subcategory sources (67 FR 44713). While we are finalizing the NESHAP for the mercury cell chlor-alkali subcategory in a separate action in today's **Federal Register**, with certain modifications from the proposal (including our decision not to regulate chlorine and HCl emissions under the authority of CAA section 112(d)(4)), we have decided to delete the non-mercury cell chlorine production subcategory in accordance with CAA section 112(c)(9)(B)(ii).

We agree with those two commenters who suggested that exercising our authority under CAA section 112(c)(9)(B)(ii) is appropriate for this subcategory for a number of reasons. First, CAA section 112(c)(9)(B)(ii) permits the deletion of subcategories, and that is what is at issue here. We are not deleting the entire chlorine production category; neither are we deleting the mercury cell subcategory, the emissions from which and production methodology are different from those facilities that produce chlorine using diaphragm cells, membrane cells, and the various processes that produce chlorine as a by-product. Second, the only HAP emitted in significant quantities from the facilities in this subcategory are chlorine and HCl. Chlorine and HCl are not carcinogens (*http://www.epa.gov/iris/*). Third, as indicated in the proposal, both of these HAP are threshold pollutants. For the proposed action, we obtained chlorine and HCl emission estimates from every known major source facility in the non-mercury cell chlorine production subcategory using our authority under section 114 of the CAA and conducted risk assessments for each facility. We updated these assessments based on comments received. Our analysis showed both at the time of proposal and shows now that emissions of these HAP from every source in the non-mercury cell chlorine production subcategory do not exceed a level which is ''adequate to protect public health with an ample margin of safety.'' Finally, our evaluation of environmental effects indicates that no adverse impacts will result from emissions from any source within the subcategory. Therefore, we agree with the commenters that our evaluation is sufficient for delisting the subcategory under CAA section 112(c)(9)(B)(ii), and that such action is justified as a logical outgrowth of public comments received on our proposed action.

We have reviewed in some detail the comments which have questioned our proposed use of CAA section 112(d)(4) to not establish NESHAP for chlorine and HCl emissions from facilities within the non-mercury cell chlorine production subcategory. We do not agree with these comments, and we are exercising our authority under CAA section 112(d)(4) to not regulate chlorine and HCl emissions from the mercury cell chlorine production source category. The NESHAP for the mercury cell chlorine subcategory is being promulgated in a separate action listed elsewhere in today's **Federal Register**. We have decided to delete the non-mercury cell chlorine production subcategory under CAA section 112(c)(9)(B)(ii) for the reasons stated above. We do not feel that we are obligated to exercise our authority under both CAA section 112(d)4) and CAA section 112(c)(9)(B)(ii) as suggested by the commenter. Therefore, today's final action is to delete the non-mercury cell chlorine production subcategory under CAA section 112(C)(9)(B)(ii).

Comment: Some commenters concluded that we did not establish either cancer or non-cancer thresholds for HCl and chlorine and, therefore, it is illegal for EPA to attempt to use CAA section 112(d)(4) to set standards.

Response: Section 112(d)(4) of the CAA states that, ''With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.'' The threshold level refers to the level of concentration of a chemical under which no health effects are expected from exposure, although this term is not defined in CAA section 112. Further, CAA section 112 does not address the process that must be followed to establish a threshold level.

The Reference Concentration (RfC) is a long-term threshold, defined as an estimate of a daily inhalation exposure that, over a lifetime, would not likely result in the occurrence of noncancer health effects in humans. We have determined that the RfC for HCl of 20 microgram per cubic meter ($\mu g/m^3$) is an appropriate threshold value for assessing risk to humans associated with exposure to HCl through inhalation *http://www.epa.gov/iris/subst/0396.htm*).

In cases where we have not studied a chemical itself, we rely on the studies of other governmental agencies, such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the Office of Health Hazard Assessment of California's Environmental Protection Agency (CAL EPA), for RfC values. The CAL EPA developed an RfC value of 0.2 $\mu g/m^3$ for chlorine based on a large inhalation study with rats.

Acute exposure guideline level (AEGL) toxicity values are estimates of adverse health effects due to a single exposure lasting eight hours or less. The confidence in the AEGL (a qualitative rating or either low, medium, or high) is based on the number of studies available and the quality of the data. Consensus toxicity values for effects of acute exposures have been developed by several different organizations, and we are beginning to develop such values. A national advisory committee organized by EPA has developed AEGL's for priority chemicals for 30-minute, 1-hour, 4-hour, and 8-hour airborne exposures. They have also determined the levels of these chemicals at each exposure duration that will protect against discomfort (AEGL1), serious effects (AEGL2), and life-threatening effects or death (AEGL3). Hydrogen chloride has been assigned AEGL values (65 FR 39264, June 23, 2000), including the 1-hour, AEGL1 of 2,700 $\mu g/m^3$ used in our revised analysis. Chlorine has also been assigned AEGL values (62 FR 58840), including the 1 hour AEGL1 of 1,500 $\mu g/m^3$ used in our revised analysis.

We maintain that the listing of health thresholds by EPA and other organizations in the public domain as discussed above has established health thresholds for HCl and chlorine. Further, we believe that the recognition of these levels by EPA, ATSDR, and CAL EPA indicates that chlorine and HCl are threshold pollutants.

Moreover, we provided the public an opportunity to comment on the thresholds for chlorine and HCl that we used in our original analysis for the proposed action. We used the same threshold level for HCl for both the proposed and final NESHAP for the pulp and paper mill category. (Although there is no mention of the HCl threshold in the final rule preamble for the pulp and paper mill NESHAP, we received no comment on the use of the threshold and used it in deciding not to set a limitation for HCl in the final NESHAP). We have also used the same threshold for HCl in the proposed NESHAP for lime production (67 FR 78046). There is no requirement in either CAA section 112(d)(4) or CAA section 112(c)(9)(B)(ii)

that EPA develop or finalize a threshold for a particular HAP in a certain manner. In fact, CAA section 112(c)(9)(B)(ii), the authority we are utilizing here, does not mention the term threshold (although the term is implied by the use of the phrase ''a level which is adequate to protect public health with an ample margin of safety.'' The thresholds we have used for both HCl and chlorine are consistent with the statutory language in CAA section 112(c)(9)(B)(ii).

B. What Issues Were Raised Related to the Potential Overlap With the HCl Production NESHAP?

Comment: Four commenters supported EPA's decision to include direct synthesis HCl as a part of the non-mercury cell chlorine production process. However, a commenter requested that we clarify that chlorine and HCl emissions from the absorber vents and associated storage vessels and transfer racks of the direct synthesis HCl production units were included in the risk analyses. To clarify applicability to the HCl Production NESHAP (subpart NNNNN of 40 CFR part 63), a commenter suggested that EPA modify the applicability provisions of subpart NNNNN.

Two commenters requested that we reevaluate collocated chlorine and HCl production sources and provide guidance so that the facilities can easily determine to which source category they belong. According to the commenters, collocated chlorine and HCl production sources may share transfer operations and storage tanks, and where appropriate, we should remove all facilities from the HCl acid production source category that meet the logical test outlined in the proposed action. The commenters stated that they believe the collocated integrated chlorine and HCl acid production facilities should be placed in the non-mercury cell chlorine production source category and removed from the HCl production source category.

Response: The final rule for subpart NNNNN of 40 CFR part 63 (68 FR 19076, April 17, 2003) states, in § 63.8985(d), that an ''HCl production facility is not subject to this subpart if it produces HCl through the direct synthesis of hydrogen and chlorine and is part of a chlor-alkali facility.'' The definition of ''HCl production facility'' in subpart NNNNN includes ''all HCl storage tanks that contain liquid HCl product that is produced in the HCl production unit'' (*e.g.,* direct synthesis unit) as well as ''all HCl transfer operations that load HCl product produced in the HCl production unit into a tank truck, rail car, ship, or barge, along with the piping and other equipment in HCl service used to transfer liquid HCl product from the HCl production unit to the HCl storage tanks and/or HCl transfer operations.'' Therefore, we have clarified that chlorine and HCl emissions from the absorber vents of direct synthesis HCl production units at chlor-alkali facilities, as well as the associated storage tanks and transfer operations specified above, are included in the non-mercury cell chlorine production subcategory and are not regulated under subpart NNNNN.

The clarifications we made in subpart NNNNN provide guidance for sources to determine to which source category their operations belong. As stated above, all HCl production facilities at chlor-alkali plants that produce HCl through direct synthesis are part of the non-mercury cell chlorine production subcategory. All other HCl production facilities (*e.g.,* those that produce HCl as a co-product of a chlorinated organic compound) at sites where chlor-alkali plants are located are part of the HCl Production source category and subject to subpart NNNNN. In the case of shared storage tanks and transfer operations, any storage tank that stores, and any transfer operation that loads, liquid HCl product which was produced in an HCl production facility that is subject to subpart NNNNN is subject to the provisions of that subpart.

C. What Issues Were Raised Regarding the Risk Assessment That Forms the Technical Basis for This Final Action?

Comment: In the analysis for the proposed action, we used the HCl RfC to determine the long-term health effects of chlorine emissions, since chlorine photolyzes very quickly to HCl in sunlight. Two comments supported that methodology and stated that our decision was based on sound scientific knowledge of the pollutants of concern.

In contrast, two other commenters did not agree with our use of the HCl RfC as a threshold level for chlorine. The commenters stated that not all of the annual chlorine emissions can be considered as HCl and, therefore, the chlorine exposure was underestimated. The commenters argued that chlorine emissions will not undergo photolysis to convert to HCl when there is not bright sunshine (*i.e.,* at night or on cloudy days).

Response: The widely accepted fact that chlorine is photolyzed in sunlight formed the basis for the assumption in the original risk assessment that chronic exposure to chlorine would not occur. As a result of the comment, we re-examined the literature on the atmospheric fate of chlorine in the atmosphere to validate our original assumption.

The additional information obtained from the literature confirmed our earlier information. There are several different pathways that molecular chlorine can take, including photolysis (reaction with light), reactions with hydroxyl radicals (OH), reactions with oxygen atoms (O), and reactions with water vapor (H_2O). Each pathway results in different amounts of Cl_2 being removed from the troposphere, and different pathways are predominant at different times of the day. However, photolysis is the primary pathway.

Therefore, this information did not fundamentally change the assumption made in the original risk assessment, which was that on a long-term basis, individuals will be exposed more to hydrochloric acid formed from the photolysis of chlorine than to chlorine. However, the commenters are correct that there will be situations where individuals will be exposed to chlorine. Therefore, in addition to the assessment where we considered only acute exposure to chlorine, we concluded that it was appropriate to consider the effects of chronic exposure to chlorine emissions from chlor-alkali plants. In order to provide an upper bound estimate of the chronic risks to compare with the lower bound estimates assuming that all chlorine was converted to HCl, we conducted modeling assuming that no chlorine is photolyzed.

In general, we consider an exposure concentration which is below the RfC concentration (what we call a hazard quotient of less than 1) to be safe. This is based on the definition of RfC. The RfC is a peer reviewed value defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily inhalation exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious noncancer effects during a life time (i.e., 70 years).

We conducted additional modeling for all facilities within the subcategory using the same model used for the proposed action (ISCST3) to estimate chronic chlorine exposure using the assumption that no chlorine is photolyzed to HCl. The hazard quotients resulting from this additional modeling defined the upper bound of our risk assessment. The highest upper-bound hazard quotient estimated by the model is just over 0.3. (For more details regarding this revised risk assessment, refer to table 2 of the responses to

comment document, available in the docket.) Given the health protective assumptions used in this analysis, the value of 0.3 represents a hypothetical exposure that is well above what we would expect actual exposures to be. This is because chlorine is converted to HCl in the presence of sunlight within a few minutes. In addition, the hazard quotient of 0.3, which results from this exposure scenario is well below the safe value of 1. Thus, we have concluded that, even assuming that some chronic exposure to chlorine may occur, none of the sources included in this subcategory will have emissions of chlorine or HCl that exceed a level of exposure which is adequate to protect public health and the environment with an ample margin of safety.

Comment: Two commenters did not support EPA's use of the AEGL2 for use as a short-term exposure limit for chlorine and HCl. One commenter stated that the AEGL2 values would not sufficiently protect public health because they would allow emissions at levels that cause discomfort, and according to the commenter, discomfort is an adverse health effect. The commenter also complained that EPA did not explain why it chose to use AEGL2 rather than AEGL1 or AEGL3. The commenter explained that although emissions from chlorine plants did not exceed AEGL2 values, the emissions may exceed AEGL1 values, and if they did, the proposed action would not meet the statutory requirements. Another commenter stated that AEGL limits are not appropriate for assessing daily human exposure scenarios because they were developed for emergency planning. The commenter recommended that EPA should use the American Conference of Governmental Industrial Hygienists (ACGIH), which has a 1-hour Short Term Exposure Limit (STEL) similar to the AEGL1 value of 1 parts per million (ppm) (for chlorine) and is used to protect against eye and mucous membrane irritation. The commenter's policy as a State agency is to add an additional safety factor of ten to ACGIH STEL values to protect for sensitive individuals, since ACGIH values were established for healthy workers. The commenter stressed that EPA must use conservative benchmarks before concluding that an ample margin of safety exists.

Response: The AEGL values represent short-term threshold or ceiling exposure values intended for the protection of the general public, including susceptible or sensitive individuals, but not hypersusceptible or hypersensitive individuals. The AEGL values represent biological reference values for this defined human population and consist of three biological endpoints for each of four different exposure periods of 30 minutes, l hour, 4 hours, and 8 hours.

The AEGL2 level is defined as follows: AEGL2 is the airborne concentration of a substance at or above which it is predicted that the general population, including susceptible, but excluding hypersusceptible individuals, could experience irreversible or other serious, long-lasting effects or impaired ability to escape. Airborne concentrations below the AEGL2, but at or above AEGL1 represent exposure levels that may cause notable discomfort.

As utilized in the proposed action, the AEGL2 1-hour concentrations for chlorine and HCl are 5,800 $\mu g/m^3$ and 33,000 $\mu g/m^3$, respectively.

The AEGL1 level is defined as follows: AEGL–1 is the airborne concentration of a substance at or above which it is predicted that the general population, including ''susceptible'' but excluding ''hypersusceptible'' individuals, could experience notable discomfort. Airborne concentrations below AEGL–1 represent exposure levels that could produce mild odor, taste, or other sensory irritations.

The 1-hour AEGL1 concentration for chlorine is 2,900 $\mu g/m^3$ and the corresponding value for HCl is 2,700 $\mu g/m^3$. The ACGIH short term exposure limit for chlorine, which is 1 ppm is approximately equal to the AEGL1 value of 2,900 $\mu g/m^3$.

Although we stand by our original analysis, which used the AEGL2 level, we have referenced the commenter's suggested use of the AEGL1 values (possibly with a safety factor) for determining whether an ample margin of safety has been obtained. Therefore, we simply compared the short-term (1-hour average) modeling results from the original acute risk assessment to the AEGL1 values. These results were obtained by modeling the maximum allowable hourly emissions reported in the CAA section 114 responses for each of the sources. For plants that did not report fugitive emissions, fugitive emissions were estimated using worst-case emission factors.

The maximum modeled 1-hour chlorine concentration for 16 of the 20 plants is less than 5 percent of the AEGL–1 (and ACGIH) value for chlorine. Further, the highest modeled concentration for any plant, 346 $\mu g/m^3$, is less than 12 percent of the AEGL1 values. The highest modeled 1-hour HCl concentration for any plant, 120 $\mu g/m^3$, is less than 5 percent of the AEGL1 value for HCl.

Based on that comparison, we conclude that the chlorine and HCl emissions from non-mercury cell chlorine production plants do not represent an unsafe level of acute exposure. Further, we maintain, along with the chlorine exposure assessment, that proves that an ample margin of safety is provided with no additional control.

Comment: Two commenters supported EPA's method of selecting a risk assessment approach to meet the unique needs of the chlorine production industry. The commenters agreed that the risk assessment methodology should not be interpreted as a standardized approach that would set a precedent for how EPA will apply CAA section 112(d)(4) in future cases. Furthermore, the commenters stated that degree of conservatism built into all aspects of the risk assessment conducted for the chlorine production source category could vary greatly in future risk assessments for other source categories. The commenters stressed that they believe that the conservative assumptions made in the health effects assessment, emissions estimates, and exposure assessment were appropriate for the proposed action.

In contrast, one commenter stated that the risk assessment fell short of the Agency's prior practice. According to the commenter, whenever EPA has made determinations to regulate a specific pollutant based on health considerations (*e.g.*, national ambient air quality standards (NAAQS) for ozone and particulate matter (PM), the Agency evaluated health effects and exposure in great detail. The commenter contended that in that case, EPA appears to be content with ''the bare and unsupported assumptions about what health levels are safe.'' The commenter argued that it was not appropriate for EPA to use a rigorous approach when setting standards and a more cursory approach when making a decision not to regulate.

Response: We disagree with the one commenter's characterization of the assessment that forms the basis for this decision, and we strongly dispute the characterization of the assessment as ''bare and unsupported.'' We maintain that the RfC and AEGL values used as benchmarks for the assessment are scientifically sound and appropriate. The emissions data and other inputs used for this analysis, which were provided by the industry and checked by our staff, are representative of the industry.

In this assessment, the predicted health effects estimated, using very conservative inputs and assumptions, were well below the recognized health

thresholds. While our approach in this particular action may not be the same as an approach for a NAAQS, it has been certainly more than cursory. We have looked at emissions and exposure data for each of the sources in the subcategory. We have established hazard indices for chlorine and HCl for each source in the subcategory. We performed a qualitative ecological assessment. Moreover, in response to comment received, we have adjusted our analyses and taken into account comments that we have received when performing these re-assessments. We will base each risk assessment for this and future regulatory action on sound scientific principles.

Comment: In the proposed action, the risk assessment modeling was conducted by placing receptors at the geographic center of census blocks within 2 kilometers of the site and in the population-weighted centers of census block groups or census tracks out to 50 kilometers. Two commenters did not agree with that methodology for determining receptor location for threshold pollutants. One commenter stated that EPA's methodology would be more appropriate for cancer causing agent, where the risk is based on probabilities of health effects. The commenter argued that for non-cancer (*i.e.*, threshold pollutants) compounds, placing the receptors at the center of census tracks would not properly identify the highest impacts close to the facility. They felt that it was more appropriate to measure the exposure of the most exposed individual (*e.g.*, someone living at the fence line of a facility or directly downwind).

Response: We agree with the commenters that the greatest impacts will likely occur near the facility for this source category. However, we do not agree with the commenters that our approach fails to meet statutory requirements. We do not feel that considering an ''ample margin of safety'' means that we must demonstrate no risk or adverse health effects for a theoretical person living at the fence line. Rather, we feel it is appropriate to assess the risks at locations where people most likely reside. A census block is the smallest geographic unit for which the Census Bureau tabulates 100-percent data. While census blocks in rural areas may be larger, many blocks correspond to individual city blocks in more populated areas. The commenter is correct in that an individual could live closer to the plant than the center of the census block, and our approach would have slightly underestimated risk. It is just as likely, however, that the closest individual could live farther from the plant than the center of the census block causing our risk estimates to be slightly overestimated. By placing receptors at the center of populated census blocks on all sides of a facility, we have evaluated people living downwind. In conclusion, we continue to feel that placing a receptor in the geographic center of populated census blocks near a facility is a well established approach to exposure modeling which results in a reasonable approximation of estimating the risks where people actually live, and we maintain that this methodology is appropriate for actions taken under the authority of either CAA section 112(d)(4) or CAA section 112(c)(9)(B)(ii).

Comment: One commenter stated that the total chlorine and HCl emissions from some of the facilities included in the risk assessment were grossly underestimated. In support of their argument, the commenter pointed out potential inconsistencies in the background emissions data contained in the docket. Specifically, the total chlorine emissions from the Dow Chemicals, Freeport, Texas facility were reported in the risk assessment document to be 22 pounds per year (lb/yr), but in the 1996 Chlorine Production Summary Report, chlorine emissions from only one production process located at the Dow Chemicals facility (the diaphragm cell process) were reported to be 9,800 lb/yr. The commenter stated that since emissions from other processes at the Dow facility were not included in the summary report, the emissions were likely to be much higher. The commenter also noted that the Dow facility had the lowest emissions (22 lb/yr) of facilities reported in the risk assessment document and the highest chlorine production volume (1.8 million lb Cl_2/yr), which also indicates that the emissions from the Dow facility were underestimated.

According to the commenter, the inconsistencies between the reports undermine the credibility of the risk assessment to support a decision to not regulate this source category. Furthermore, the commenter stated that they believe that the emission inventory information provides justification for a need to establish a MACT floor. The commenter concluded that the risk assessment was flawed because the potential impacts on health and the environment were underestimated.

Response: The primary sources of the emission estimates used in the risk assessment for this source category were responses submitted directly by the facilities in response to a request for information under our authority in section 114 of the Clean Air Act. A review of the data was conducted as they were received, and follow-up questions asked of the industry representatives to clarify the information submitted. After the analysis, we were satisfied with the quality of the data, with one exception. Only one-half of the facilities submitted chlorine emission estimates from fugitive sources. One of the areas of focus in the follow-up questions was to verify the fugitive emission estimates for those facilities that did submit such estimates. Our conclusion was that fugitive emissions are to be expected from every non-mercury cell chlorine production plant, so we estimated fugitive emissions for those that did not submit estimates. That was done using the highest emission factor calculated from the plants that did report fugitives. The use of the ''worst-case'' factor was appropriately conservative for this assessment.

The commenter compared the emissions used in the assessment to 1991/1992 base year emissions in an earlier report on this industry, the 1996 Chlorine Production Summary Report, and correctly noted that there is a large discrepancy between the emissions levels for Dow Chemical's plant in Freeport, Texas. As a result of that comment, we made a comparison of the emissions from all plants between these two sources of information.

The comparison revealed that the Dow Freeport facility is only one of only two plants whose emissions used in the risk assessment were lower than the 1991/1992 base year emissions in the 1996 summary report. In fact, the 2000/2001 emissions used in the risk assessment for the other facilities with reported emissions in both documents averaged five times HIGHER than those reported in the 1996 summary document. Clearly, the comparison does not lead to the conclusion that the risk assessment was based on grossly underestimated emissions. A review of the data submitted by the two facilities whose 2000/2001 emissions were substantially lower than their 1991/1992 emissions did not result in any obvious errors or questionable assumptions that could be disputed with the available information. Furthermore, according to the facility, the chlorine and HCl emissions reported in the 1996 summary document included emissions from processes within the plant not related to chlorine production. That was corrected for the 2000/2001 emissions data submittal. Therefore, no changes were made as a result of the review of the reported emissions data.

The comparison did result in the concern that the emissions, particularly

the fugitive emissions estimated using the worst-case factor, had been overestimated. As a point of comparison, we obtained the 2001 chlorine releases from the Toxic Release Inventory (TRI) for all ten sites for which fugitive emissions were estimated using the worst-case factor. We found that nine of the ten plants had total chlorine fugitive releases reported in TRI that were less than the those used in the risk assessment. For instance, the PPG facility in Lake Charles, Louisiana, reported 8,000 lb/yr of fugitive chlorine releases for the entire site (a very large chemical complex). We estimated 31,178 lb/yr using the worst-case emission factor. We concluded that it was overly conservative to use these estimates in light of the TRI information and in fact, we likely overestimated the fugitive emissions for these plants. Therefore, in the revised modeling for this final action for chronic chlorine exposures, we used the total chlorine fugitive releases from TRI in the revised assessment for eight plants. That is still conservative as these TRI values represent chlorine fugitive releases from all processes at the site, not just the non-mercury cell chlorine production processes. For two plants, company representatives provided a breakdown of the portion of the TRI emissions that were from the non-mercury cell chlorine production processes, and those values were used in the re-assessment.

Comment: One commenter stated that all chlorine emissions from non-mercury chlorine production facilities that are collocated with other source categories need to be reviewed as a whole when evaluating public health risk, adverse environmental effects, and possible control strategies. The commenter stressed that other sources of chlorine and HCl should be included in the risk assessment under CAA section 112(d)(4). The commenter was concerned that not accounting for all chlorine and HCl emissions from a facility would provide the community with a false sense of assurance of protection, and is not consistent with the legislative intent of the CAA to consider cumulative HAP exposure issues through an integrated approach under CAA sections 112(d), 112(f), and 112(k). Therefore, the commenter requested that EPA evaluate the potential for adverse health and environmental impacts using conservative risk assessment methodology that incorporates all known chlorine and HCl emissions from a contiguous facility.

Response: Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP, and to establish NESHAP for the listed source categories and subcategories. In directing us how to establish MACT emission limits, section 112(d)(3) of the CAA requires us to set the emission limitation at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. Therefore, the entire MACT program is structured on a source category-specific basis. All MACT standards developed to date have addressed emissions from specific source categories.

There are instances where non-mercury chlorine production facilities are collocated with other source categories. However, based on the risk assessment for chlorine and HCl emissions from chlor-alkali plants, the predicted impacts from chlorine and HCl at these chlor-alkali plants are extremely low. We believe that the human health and environmental impacts from all sources in the category even when collocated with other chlorine and HCl emissions will still be within an ample margin of safety to protect the public health, and will not cause adverse environmental effects. Moreover, as indicated in the preamble to the proposed rule, most major processes at the sites where non-mercury cell chlorine production facilities are located are subject to, or will be subject to, NESHAP to reduce HAP emissions (67 FR 44714, July 3, 2002). Therefore, it would not be appropriate to include emissions from those sources in an assessment for the non-mercury cell chlorine production source category conducted under the authority of CAA section 112(d)(4).

Comment: Two commenters stated that the environmental effects analysis was not adequate. One commenter stated that potential ecological effects of HCl emissions have not been properly referenced. One commenter stated that EPA's proposed action falls short of its obligation to protect against environmental effects. According to the commenter, EPA has understated its statutory obligation in the proposed action. The commenter referred to the legislative history, which indicates that CAA section 112(d)(4) requires standards that ''would not result in adverse environmental effects which would otherwise be reduced or eliminated.'' The commenter listed the several shortcomings in the EPA's environmental assessment.

The commenter concluded that although EPA acknowledged that it had an obligation to ensure that any standards set under CAA section 112(d)(4) did not have any adverse environmental effects, the Agency did not properly consider the issue. Therefore, commenter stated that they believed that EPA could not promulgate standards under CAA section 112(d)(4) without contravening the CAA.

Response: While CAA section 112(d)(4) makes no mention of environmental effects, we took the potential of such adverse effects into account when we issued our proposed action. In addition, CAA section 112(c)(9)(B)(ii), which is the authority we are citing in today's final action to delete this subcategory, does require that we show there are no adverse environmental effects from emissions from the subcategory.

The level of our analysis at proposal was adequate to satisfy the requirements of CAA section 112(c)(9)(B)(ii). The commenters did not suggest that they believed there was the potential for adverse environmental effects from HCl or chlorine emissions from non-mercury cell chlorine production plants. Were there any evidence that such adverse effects were likely, or even possible, we would have conducted a more intensive ecological risk assessment.

The commenters are correct, however, that we did not discuss the ecological effects of chlorine. That was because, as was stated in the proposal preamble, we did not perform a separate evaluation of chronic chlorine exposure because chlorine is converted to HCl in the atmosphere so rapidly. Following is a brief summary of the environmental effect of chlorine.

Atmospheric exposure is the primary pathway for environmental effects from chlorine emissions. However, since most chlorine is converted to HCl, studies have focused on the effects of HCl on vegetation. Although plant exposures to elevated levels of chlorine can cause plant injury, it tends to be converted to other, less toxic forms rather rapidly in plants, and may not result in the direct accumulation of toxic pollutant residuals important in the food chain.

Plant studies have found foliar damage due to chlorine emissions and foliar damage, decreased levels of chlorophyl a and b, decreased leaf areas, obvious chlorosis, and a decline in fruit production due to chlorine emissions.

There is evidence of effects to animals due to accidental and/or catastrophic exposures, but the chlorine concentrations of these exposures are unknown. However, there is no data on exposure to historic or atmospheric concentrations.

More information is available on the effects of chlorine from aquatic exposures. However, there is no evidence that suggests that emissions of chlorine from industrial sources in the air contribute significantly to aquatic concentrations of chlorine.

One study reported a significant decrease in phytoplankton activity following exposure to 0.1 ppm chlorine in cooling tower water. Additional laboratory studies showed that continuous exposure to 0.002 milligram per liter (mg/L) total residual chlorine (TRC) resulted in depressed algal biomass in naturally-derived microcosms.

When exposed continuously for 96 hours to 0.05 mg/L TRC, the Eurasian water milfoil showed a significant reduction in shoot and dry weights, shoot length, and chlorophyll content.

Aquatic invertebrates are very sensitive to chlorine and reaction products of chlorine, with early life stages showing the most sensitivity. For example, free chlorine, monochloramine, and dichloroamine have been shown to reduce the rate of oyster larvae survival. Many studies have been performed, and the results are highly variable depending on the chlorine species, the lifestage of the invertebrate, and other factors such as salinity. The most sensitive aquatic species appears to be molluscan larvae, with LC_{50} concentrations of 0.005 mg/L. Sublethal effects have also been studied, including reduced growth, reduced motility, and reproductive failure.

The effects on fish also vary depending on the life stage and fish species, and environmental factors, such as the pH, temperature, and type of chlorine species. Larval stages are more susceptible to effects, and freshwater species are more sensitive than marine species. Free chlorine is generally more toxic than residual chlorine; where the form of chlorine is dependent on the pH of the water. Sublethal effects such as avoidance, reduction of diversity in chlorinated effluents, reduction or elimination of spawning, abnormal larvae, reduced oxygen consumption, and gill damage have been noted. Many LC_{50} values were reported, ranging from 0.08 mg/L after 24 hours of exposure to TRC to 2.4 mg/L after 0.5 hours of exposure to TRC.

Acute and chronic exposures to predicted chlorine and HCl concentrations around the sources are not expected to result in adverse toxicity effects. These pollutants are not persistent in the environment. The chlorine and HCl emitted should not significantly contribute to aquatic chlorine concentrations, and are not likely to accumulate in the soil. Chlorine rapidly converts to HCl in the atmosphere, and chlorine and HCl are not believed to result in biomagnification or bioaccumulation in the environment. Therefore, we do not believe there will be adverse ecological effects due to chlorine and HCl emissions from non-mercury cell chlorine production plants.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

It has been determined that this final action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

Since there is no rule associated with this final action, there are no information collection requirements.

C. Regulatory Flexibility Act

The RFA generally requires that an agency conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final action deletes the subcategory of sources that do not utilize mercury cells to produce chlorine and caustic. We conclude that no further control or regulation is necessary.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and Tribal governments, in aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation as to why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, we must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the

development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this final action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's final action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, this final action contains no regulatory requirements. Therefore, the final action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government.''

The final action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the final action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

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

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The Executive Order 13045 applies to any rule (1) that OMB determines is ''economically significant,'' as defined under Executive Order 12866, and (2) the EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental, health, or safety aspects relevant to children and explain why the rule is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA. Since there is no rule associated with this final action, Executive Order 13045 does not apply.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The final action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standads in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

The final action does not involve technical standards, therefore, the NTTAA does not apply.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Today's final action is not a rule, therefore, the Congressional Review Act does not apply.

List of Subjects in 40 CFR Part 63

Environmental protection, Air emissions control, Hazardous air pollutants.

Dated: August 29, 2003.

Marianne L. Horinko,

Acting Administrator.

[FR Doc. 03–22929 Filed 12–18–03; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
December 19, 2003

Part IV

Environmental Protection Agency

40 CFR Parts 60 and 63

Standards of Performance for Bulk Gasoline Terminals and National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[OAR–2002–0029, FRL–7599–9]

RIN 2060–AJ42

Standards of Performance for Bulk Gasoline Terminals and National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On August 18, 1983, we promulgated Standards of Performance for Bulk Gasoline Terminals (48 FR 37590). The 1983 standards of performance limit and control emissions of volatile organic compounds (VOC) that react with other pollutants to form ozone (or smog) which has been linked to respiratory impairment and eye irritation, and negatively affects vegetation and ecosystems. On December 14, 1994, we promulgated National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (59 FR 64318). The 1994 national emission standards limit and control hazardous air pollutants (HAP) that are known or suspected to cause cancer or have other serious health or environmental effects.

On September 20, 2002, we proposed amendments to the 1983 standards of performance and 1994 national emission standards to provide for the use of alternative leak test procedures for railcars under the 1994 national emission standards, a clarification on monitoring flares and thermal oxidation systems used to comply with the 1994 national emission standards, alternative recordkeeping requirements for tank trucks and railcars under the 1983 standards of performance and 1994 national emission standards, and the use of flare design specifications under the 1983 standards of performance by incorporating the allowance in the text of that final rule. This document takes final action on those proposed amendments. The amendments do not change the level of control or compromise the environmental protection achieved by the 1983 standards of performance and 1994 national emission standards, but provide clarification and alternatives that enhance the flexibility of the recordkeeping and testing requirements of the two final rules.

DATES: This rule is effective December 19, 2003. The incorporation by reference of certain publications listed in today's final amendments is approved by the Director of the Federal Register as of December 19, 2003.

ADDRESSES: Docket Nos. OAR–2002–0029 and A–92–38 contain supporting information used in developing the standards. The docket is located at the EPA Docket Center (Air Docket), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability to a facility, contact the appropriate State or local agency representative. If no State or local agency representative is available, contact the appropriate EPA Regional Office Director listed in 40 CFR 63.13. For further information on compliance issues, contact Ms. Julie Tankersley, U.S. EPA, Office of Enforcement and Compliance Assurance, 2223A, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–7002, electronic mail (e-mail) address: *tankersley.julie@epa.gov.* For further information concerning analyses performed in the development of the final amendments, contact Mr. Stephen Shedd, U.S. EPA, OAQPS, Emission Standards Division, Waste and Chemical Processes Group (C439–03), Research Triangle Park, North Carolina 27711, telephone (919) 541–5397, facsimile number (919) 685–3195, electronic mail (e-mail) address: *shedd.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated entities. The regulated categories and entities affected by this action include:

Category	NAICS[a]	(SIC[b])	Examples of regulated entities
Industry	324110 493190 486910 422710	(2911) (4226) (4613) (5171)	Operations at major sources that transfer and store gasoline, including petroleum refineries, pipeline breakout stations, and bulk terminals.
Federal/State/local/tribal governments.			

[a] North American Industry Classification System.
[b] Standard Industrial Classification.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 60.500 and 40 CFR 63.420. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. We have established an official public docket for this action under Docket ID Nos. A–92–38 and OAR–2002–0029. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final amendments. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by stature. The official public docket is the collection of materials that is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 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, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. The telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. An electronic version of the public docket (Docket ID

No. OAR–2002–0029) is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number (OAR–2002–0029). Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the above paragraph entitled ''Docket.''

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final amendments is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 17, 2004. Only those objections to the final amendments which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Introduction
II. Summary of Comments and Responses
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Analysis
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Introduction

We received eight public comment letters on the September 20, 2002 proposed amendments. Six of the comment letters were from industry representatives, one was from a control device manufacturer, and one was from a State air pollution control agency. The commenters addressed the alternative leak test procedures for railcars, the definitions and monitoring requirements for flares and thermal oxidation systems, and the alternative recordkeeping requirements for tank trucks. The commenters expressed support for certain provisions of the amendments, disagreed with one provision, and requested an additional alternative to one that was proposed. This preamble summarizes the comments, presents our responses to the comments, and identifies changes made to the amendments as proposed.

II. Summary of Comments and Responses

Comment: Several commenters (two trade organizations, three oil companies, and one control device manufacturer) objected to the proposed amendments concerning thermal oxidation systems, stating that the current national emission standards allow three monitoring options for devices they referred to as ''enclosed flares,'' which are flare-like burner systems enclosed by a stack or other enclosure. They stated that the proposed amendments amounted to an unnecessary and inappropriate narrowing of the monitoring alternatives for enclosed flares. They stated that monitoring of the pilot flame provides adequate assurance that the enclosed flare is operating in compliance with the emission standard, and that the temperature monitoring alternative should be applied only to enclosed flares that are not meeting the design specification requirements of 40 CFR 63.11(b), operated similarly to thermal incinerators, or operated by a facility that prefers to use this monitoring method.

The commenters offered several reasons why continuous temperature monitoring would not be appropriate for enclosed flares. They claimed that vapor oxidation efficiency does not directly correlate with combustion zone temperature in these systems. They said that temperature monitoring is most appropriate for thermal incinerators where relatively constant flow rates and compositions and, thus, a constant temperature, are maintained. They explained that most enclosed flares operate on a cyclic, on-off basis and, when designed and operated properly, provide for energy conservation and maximum emissions reductions. The commenters noted that enclosed flares are designed and operated just like other flares, using the same technology and installed in the same applications.

Additionally, the commenters pointed out that enclosed flares may have to use additional supplemental fuel to achieve and maintain a specific temperature, which would lead to increased emissions of VOC, carbon monoxide, nitrogen oxides, and carbon dioxide. The amendments as proposed also could inadvertently promote the use of less desirable and less efficient open flame flares at facilities wishing to avoid the increased testing and monitoring requirements associated with the thermal oxidation definition. One commenter recommended that the parametric continuous monitoring requirements not be limited exclusively to firebox or stack temperature, and that no parametric monitoring methods be prohibited on a general basis as long as the parameter can be demonstrated to be reliable. Other commenters also requested that facilities continue to have the option of applying for an alternative operating parameter as provided in 40 CFR 63.427(a)(5).

Response: As discussed in the proposal preamble, the design and operating specifications for flares in the General Provisions of 40 CFR part 60 and 40 CFR part 63 were developed out of necessity, due to the fact that flares cannot be reasonably tested using the prescribed EPA source test methods. Further, it is not feasible to continuously monitor either emissions or an operating parameter of this type of control system. However, the thermal oxidation systems described by the commenters (enclosed flares) do contain an enclosed exhaust space (firebox, ductwork, stack, etc.) in which performance testing and continuous monitoring can be performed. We would have preferred to require continuous emission monitoring systems (CEMS) on all control devices since they directly monitor emissions to the atmosphere. Because viable CEMS were not identified (except for carbon adsorption systems), our intention has always been to apply, wherever possible, requirements for testing and for continuous monitoring of a direct indicator of compliance. Combustion temperature is a good indicator of

performance for combustion devices. Since open flares could not be directly measured for emissions or firebox temperature, we felt the next best indicator of continuing compliance was to require flares to meet minimum design specifications and to monitor for the presence of a flame. Studies conducted by EPA indicate that open flares meeting the design and monitoring requirements perform at a very high level of efficiency. However, the flare design requirements and the requirement to monitor for the presence of a flame were not intended for other thermal oxidation systems since there are more direct means of monitoring proper operation and maintenance.

While it may be possible that the types of devices described by the commenters are capable of operating as efficiently as open flares, the commenters did not provide any data or other information to demonstrate that a presence-of-flame indicator installed in a thermal oxidation system would ensure compliance with emission standards. They also did not describe alternate ways of ensuring that these systems are designed and operated properly if they were allowed to use presence-of-flame indicators. For compliance to be assured, the system needs to be properly designed, source tested initially to demonstrate compliance and to establish operating parameter values, and continuously monitored to ensure proper operation and continued compliance with the emission standards. We do not, however, mandate that the owner or operator adhere to a specific set of operating parameters to ensure continuing compliance. In fact, § 63.427(a)(5) of the final rule allows the owner or operator the flexibility of monitoring any parameters that can be demonstrated to ensure compliance with the emission standards. Commenters have stated that alternative parameters (other than temperature) for enclosed flares have already been approved by States and EPA. Those alternatives are acceptable under the national emission standards, as long as they have been properly demonstrated and approved as provided under § 63.427(a)(5).

As to the impacts of maintaining a specific temperature, we do not specify any certain temperature, averaging time, or monitoring frequency. Thus, if the owner or operator chooses to monitor temperature, they would develop and demonstrate (while considering the impacts on energy and other operating costs) the most appropriate maximum and minimum temperature values, averaging times, and monitoring frequency to indicate that the device is continuously achieving the emission standards.

Due to these considerations, we have retained the proposed definitions for ''flare'' and ''thermal oxidation system''. Further, § 63.427(a)(5) of the final rule still allows the monitoring of alternative operating parameters for thermal oxidation systems, flares, or any other type of control device upon demonstration that the parameter demonstrates continuous compliance with the standards of performance or national emission standards.

Comment: Two trade organizations commented that some of their member companies have agreements with local control agencies to maintain cargo tank vapor tightness documentation off-site but not necessarily have copies instantly available at the site. These facilities utilize a centralized computer system to maintain the records for each vehicle that would load at the terminal. Prior to allowing the vehicle operator to begin loading, the system automatically compares the vehicle identification number to the test records to ensure that the cargo tank has passed its test and that the test results have not expired. The facility maintaining the vapor tightness test results is able to provide a paper version to the terminal within a matter of minutes to hours (via facsimile), depending on the volume of records requested at any given time. The commenters said that the proposed requirement for facilities to provide the records ''instantly'' may prohibit these companies from continuing to operate using their current systems. They provided suggested rule language for incorporation into the 1983 standards of performance and 1994 national emission standards that would account for the recordkeeping procedure used by these companies. Their suggested provision would allow owners and operators using an automated vehicle lock-out system to maintain a record system in which a copy of the test documentation could be made available to inspectors either during a visit by EPA or at some other mutually agreeable time.

Response: The intent of the requirement for affected facilities to maintain vapor tightness test records is to provide a means of ensuring that noncertified gasoline cargo tanks do not load (or at least are not reloaded) at the facility. The computerized automation systems in use at many facilities could provide this assurance when they have the capability of automatically locking noncertified tanks out of the loading process, and when records are properly maintained and entered into the computerized system. Therefore, we have agreed to add this option in addition to what was proposed.

Comment: Commenters agreed with all of the proposed changes for railcar testing. However, two of the commenters clarified a statement in the preamble (67 FR 59437, September 20, 2002) that, ''according to owners of railcars, (railcar) leases usually run from 3 to 5 years and require leak testing at the start or renewal of the lease.'' They agreed that most leases range from 3 to 5 years, but pointed out that the lessee determines when the leak test will be run according to the lessee's pre-loading procedures and/or Department of Transportation (DOT) requirements. The commenters stated that ''although determined by the lessee, it is normal practice for a leak test to be performed when a lessor starts a new lease, but a leak test is traditionally not performed when a lease is renewed by the same company until it is time to conduct the test during scheduled maintenance.''

Response: After consideration of the information provided by the commenters, we have decided not to make any changes to the amendments as proposed. As discussed more fully at proposal, there are several factors involved in our decision to consider the DOT leak testing procedures as an acceptable alternative to Method 27. The DOT test procedures allow for no leaks during the test while Method 27 does allow some leakage. The DOT procedures require pre- and post-test inspections of the structural integrity of the cargo tank and also require a qualifying program for testing personnel. The EPA leak testing procedures do not require either of these items. Our procedures do, however, require an annual test while the DOT only requires testing once every 10 years or whenever the service equipment is reassembled on the tank. The difference in testing frequency is not a significant issue because the other factors balance the difference. Therefore, while we would prefer the lease to require that leak tests be performed and that the condition of the cargo tank be checked at the renewal of a lease as well as at the start of a new lease, DOT requirements control vapor leakage to levels equivalent to those required by the 1994 national emission standards.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulation is

''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

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

Today's final amendments to the 1983 standards of performance and 1994 national emission standards will reduce the recordkeeping and testing burden for some terminals, but we do not have an estimate of the number of terminals affected. Therefore, the cost impacts of the subject standards are less than previously estimated, but our estimates have not been revised. The OMB evaluated the action and determined it to be nonsignificant; therefore, the action did not require OMB review.

B. Paperwork Reduction Act

The information collection requirements in the subject standards have been previously submitted to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and were approved by OMB under the promulgated 1983 standards of performance (OMB control number 2060–0006–ICR 0665.06) and 1994 national emission standards (OMB control number 2060–0325–ICR 1659.04). A copy of the Information Collection Request (ICR) documents may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *Auby.Susan@epa.gov*, or by calling (202) 566–1672.

Today's final amendments will reduce the recordkeeping and testing burden for some terminals. We do not have an estimate of the number of terminals affected by today's final amendments. Therefore, the ICR burden is less than previously estimated but the ICR has not been revised.

C. Regulatory Flexibility Analysis

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final amendments. The EPA has also determined that the final amendments will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's final amendments on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,500 employees, or a maximum of $5 million to $18.5 million in revenues, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR 121). For more information on size standards for particular industries, please refer to the economic impact analysis in the docket.

When EPA promulgated the 1994 national emission standards, it analyzed the potential impacts on small businesses, discussed the results of the analysis in the **Federal Register**, and concluded that the promulgated rule would not result in financial impacts that significantly or differentially stress affected small companies. The 1983 standards of performance were analyzed for potential impacts on small businesses under the Regulatory Flexibility Act (RFA) of 1980, and it was determined that the RFA did not apply. We analyzed and considered the impacts, and no significant impacts were expected.

After considering the economic impacts of today's final amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Today's final amendments will minimize the impact on small entities by adding two alternatives to provide facilities with the flexibility to comply in the least costly manner while maintaining a workable and enforceable rule. Both alternatives were requested by impacted bulk terminal and railcar owners and operators, and we worked with them to develop the alternatives.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's final amendments do not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. Thus, today's final action is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Today's final amendments do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to today's amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

Today's final amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's final amendments.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's final amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health and safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Today's final amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when the agency does not use available and applicable VCS.

The final amendments involve technical standards. The EPA cites DOT railcar procedures that reference the AAR Tank Car Manual bubble test. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to that method. The search and review results have been documented and are placed in the docket for the final amendments, Docket Nos. A–92–38 and OAR–2002–0029.

Two VCS are cited in the final amendments as alternatives to DOT's bubble test. The two standards are British Standard (BS) EN–1593:1999, ''Non-destructive Testing: Leak Testing-Bubble Emission Techniques,'' and ASTM E515–95 (Reapproved 2000), ''Standard Test Method for Leaks Using Bubble Emission Techniques.'' These two standards are discussed below.

The VCS BS EN–1593 cited in the final amendments is a detailed method that contains procedures that are either equivalent to those of DOT bubble test specifications or that provide additional quality control, including: certification of personnel, creating a pressure differential, type of liquids to be used, preparation of the surface, dwell time appropriate for the establishment of bubble emissions, required surface temperature range, and specifications for direct and indirect visual examination procedures.

The VCS ASTM E515 cited in the final amendments is also an acceptable method that contains procedures that are either equivalent to those of DOT bubble test specifications or provide additional quality control, including: the type of liquids to be used; application of fluid; creating a pressure differential; applying pressure before liquid is applied; and accuracy, repeatability, and reproducibility of locating leaks of 0.0001 standard cubic centimeters per second or greater.

The methods that are included in the final amendments are listed in 40 CFR 63.425(i)(2). Under 40 CFR 63.7(f) of subpart A (General Provisions), a source may apply to EPA for permission to use alternative test methods in place of any EPA testing methods.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing these final amendments 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 amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final amendments become effective on December 19, 2003.

List of Subjects

40 CFR Part 60

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

40 CFR Part 63

Environmental protection, Administrative practice and procedures,

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 12, 2003.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, parts 60 and 63 of the Code of Federal Regulations are amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart XX—[Amended]

■ 2. Section 60.501 is amended by adding in alphabetical order definitions for ''flare'' and ''thermal oxidation system'' to read as follows:

§ 60.501 Definitions.

* * * * *

Flare means a thermal oxidation system using an open (without enclosure) flame.

* * * * *

Thermal oxidation system means a combustion device used to mix and ignite fuel, air pollutants, and air to provide a flame to heat and oxidize hazardous air pollutants. Auxiliary fuel may be used to heat air pollutants to combustion temperatures.

* * * * *

■ 3. Section 60.503 is amended by adding paragraphs (e) and (f) to read as follows:

§ 60.503 Test methods and procedures.

* * * * *

(e) The performance test requirements of paragraph (c) of this section do not apply to flares defined in § 60.501 and meeting the requirements in § 60.18(b) through (f). The owner or operator shall demonstrate that the flare and associated vapor collection system is in compliance with the requirements in §§ 60.18(b) through (f) and 60.503(a), (b), and (d).

(f) The owner or operator shall use alternative test methods and procedures in accordance with the alternative test method provisions in § 60.8(b) for flares that do not meet the requirements in § 60.18(b).

■ 4. Section 60.505 is amended by adding paragraph (e) to read as follows:

§ 60.505 Reporting and recordkeeping.

* * * * *

(e) As an alternative to keeping records at the terminal of each gasoline cargo tank test result as required in paragraphs (a), (c), and (d) of this section, an owner or operator may comply with the requirements in either paragraph (e)(1) or (2) of this section.

(1) An electronic copy of each record is instantly available at the terminal.

(i) The copy of each record in paragraph (e)(1) of this section is an exact duplicate image of the original paper record with certifying signatures.

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (e)(1) of this section.

(2) For facilities that utilize a terminal automation system to prevent gasoline cargo tanks that do not have valid cargo tank vapor tightness documentation from loading (*e.g.*, via a card lock-out system), a copy of the documentation is made available (*e.g.*, via facsimile) for inspection by permitting authority representatives during the course of a site visit, or within a mutually agreeable time frame.

(i) The copy of each record in paragraph (e)(2) of this section is an exact duplicate image of the original paper record with certifying signatures.

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (e)(2) of this section.

* * * * *

PART 63—[AMENDED]

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

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

■ 6. Section 63.14 is amended by adding new paragraphs (b)(30) and (j) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(30) ASTM E 515–95 (Reapproved 2000), Standard Test Method for Leaks Using Bubble Emission Techniques, IBR approved for § 63.425(i)(2).

* * * * *

(j) The following material is available for purchase from: British Standards Institute, 389 Chiswick High Road, London W4 4AL, United Kingdom.

(1) BS EN 1593:1999, Non-destructive Testing: Leak Testing—Bubble Emission Techniques, IBR approved for § 63.425(i)(2).

(2) [Reserved]

* * * * *

Subpart R—[AMENDED]

■ 7. Section 63.421 is amended by inserting the following definitions in alphabetical order as follows:

§ 63.421 Definitions.

* * * * *

Flare means a thermal oxidation system using an open (without enclosure) flame.

* * * * *

Thermal oxidation system means a combustion device used to mix and ignite fuel, air pollutants, and air to provide a flame to heat and oxidize hazardous air pollutants. Auxiliary fuel may be used to heat air pollutants to combustion temperatures.

* * * * *

■ 8. Section 63.422 is amended by revising paragraph (c)(2)(i) and adding paragraph (e) to read as follows:

§ 63.422 Standards: Loading racks.

* * * * *

(c) * * *

(2) * * *

(i) The tank truck or railcar gasoline cargo tank meets the test requirements in § 63.425(e), or the railcar gasoline cargo tank meets applicable test requirements in § 63.425(i);

* * * * *

(e) As an alternative to 40 CFR 60.502(h) and (i) as specified in paragraph (a) of this section, the owner or operator may comply with paragraphs (e)(1) and (2) of this section.

(1) The owner or operator shall design and operate the vapor processing system, vapor collection system, and liquid loading equipment to prevent gauge pressure in the railcar gasoline cargo tank from exceeding the applicable test limits in § 63.425(e) and (i) during product loading. This level is not to be exceeded when measured by the procedures specified in 40 CFR 60.503(d) of this chapter.

(2) No pressure-vacuum vent in the bulk gasoline terminal's vapor processing system or vapor collection system may begin to open at a system pressure less than the applicable test limits in § 63.425(e) or (i).

■ 9. Section 63.425 is amended by revising paragraph (a) and adding paragraph (i) to read as follows:

§ 63.425 Test methods and procedures.

(a) Each owner or operator subject to the emission standard in § 63.422(b) or 40 CFR 60.112b(a)(3)(ii) shall comply with the requirements in paragraphs (a)(1) and (2) of this section.

(1) Conduct a performance test on the vapor processing and collection systems according to either paragraph (a)(1)(i) or (ii) of this section.

(i) Use the test methods and procedures in 40 CFR 60.503 of this chapter, except a reading of 500 ppm shall be used to determine the level of

leaks to be repaired under 40 CFR 60.503(b), or

(ii) Use alternative test methods and procedures in accordance with the alternative test method requirements in § 63.7(f).

(2) The performance test requirements of 40 CFR 60.503(c) do not apply to flares defined in § 63.421 and meeting the flare requirements in § 63.11(b). The owner or operator shall demonstrate that the flare and associated vapor collection system is in compliance with the requirements in § 63.11(b) and 40 CFR 60.503(a), (b), and (d), respectively.

* * * * *

(i) *Railcar bubble leak test procedures.* As an alternative to paragraph (e) of this section for annual certification leakage testing of gasoline cargo tanks, the owner or operator may comply with paragraphs (i)(1) and (2) of this section for railcar gasoline cargo tanks, provided the railcar tank meets the requirement in paragraph (i)(3) of this section.

(1) Comply with the requirements of 49 CFR 173.31(d), 179.7, 180.509, and 180.511 for the testing of railcar gasoline cargo tanks.

(2) The leakage pressure test procedure required under 49 CFR 180.509(j) and used to show no indication of leakage under 49 CFR 180.511(f) shall be ASTM E 515–95 (incorporated by reference, *see* § 63.14), BS EN 1593:1999 (incorporated by reference, *see* § 63.14), or another bubble leak test procedure meeting the requirements in 49 CFR 179.7, 180.505, and 180.509.

(3) The alternative requirements in this paragraph (i) may not be used for any railcar gasoline cargo tank that collects gasoline vapors from a vapor balance system permitted under or required by a Federal, State, local, or tribal agency. A vapor balance system is a piping and collection system designed to collect gasoline vapors displaced from a storage vessel, barge, or other container being loaded, and routes the displaced gasoline vapors into the railcar gasoline cargo tank from which liquid gasoline is being unloaded.

10. Section 63.427 is amended by revising paragraphs (a)(3) and (4) to read as follows:

§ 63.427 Continuous monitoring.

(a) * * *

(3) Where a thermal oxidation system other than a flare is used, a CPMS capable of measuring temperature must be installed in the firebox or in the ductwork immediately downstream from the firebox in a position before any substantial heat exchange occurs.

(4) Where a flare meeting the requirements in § 63.11(b) is used, a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, must be installed in proximity to the pilot light to indicate the presence of a flame.

* * * * *

■ 11. Section 63.428 is amended by revising paragraphs (b)(1), (b)(3)(i), and (b)(3)(viii), and by adding paragraph (k) to read as follows:

§ 63.428 Reporting and recordkeeping.

* * * * *

(b) * * *

(1) Annual certification testing performed under § 63.425(e) and railcar bubble leak testing performed under § 63.425(k); and

* * * * *

(3) * * *

(i) Name of test: Annual Certification Test—Method 27 (§ 63.425(e)(1)); Annual Certification Test—Internal Vapor Valve (§ 63.425(e)(2)); Leak Detection Test (§ 63.425(f)); Nitrogen Pressure Decay Field Test (§ 63.425(g)); Continuous Performance Pressure Decay Test (§ 63.425(h)); or Railcar Bubble Leak Test Procedure (§ 63.425(i)).

* * * * *

(viii) Test results: test pressure; pressure or vacuum change, mm of water; time period of test; number of leaks found with instrument; and leak definition.

* * * * *

(k) As an alternative to keeping records at the terminal of each gasoline cargo tank test result as required in paragraph (b) of this section, an owner or operator may comply with the requirements in either paragraph (k)(1) or (2) of this section.

(1) An electronic copy of each record is instantly available at the terminal.

(i) The copy of each record in paragraph (k)(1) of this section is an exact duplicate image of the original paper record with certifying signatures.

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (k)(1) of this section.

(2) For facilities that utilize a terminal automation system to prevent gasoline cargo tanks that do not have valid cargo tank vapor tightness documentation from loading (*e.g.*, via a card lock-out system), a copy of the documentation is made available (*e.g.*, via facsimile) for inspection by permitting authority representatives during the course of a site visit, or within a mutually agreeable time frame.

(i) The copy of each record in paragraph (k)(2) of this section is an exact duplicate image of the original paper record with certifying signatures.

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (k)(2) of this section.

[FR Doc. 03–31235 Filed 12–18–03; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
December 19, 2003

Part V

Department of Housing and Urban Development

Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4878–N–01]

Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: HUD is publishing proposed ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons'' (Guidance) as required by Executive Order 13166, which addresses assistance to recipients of federal financial assistance who have limited English proficiency.

DATES: *Comment Due Date:* January 20, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Pamela D. Walsh, Director, Program Standards Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5226, 451 Seventh Street SW., Washington, DC 20410–2000, telephone (202) 708–2904 (this is not a toll-free number). Hearing- or speech-impaired individuals may access the telephone number listed in this section through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Under Title VI of the Civil Rights Act of 1964 (Title VI) and implementing regulations, recipients of federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP). Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each federal agency that extends assistance subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. Because this guidance (42 U.S.C. 2000d) (Title VI) must adhere to the federal-wide compliance standards and framework detailed in the model LEP Guidance of the Department of Justice (DOJ) issued on June 18, 2002, HUD specifically solicits comments on the nature, scope, and appropriateness of the HUD-specific examples set out in this guidance explaining and/or highlighting how those consistent federal-wide compliance standards are applicable to recipients of federal financial assistance through HUD.

I. Introduction

Most individuals living in the United States read, write, speak, and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost seven million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or ''LEP.'' While detailed data from the 2000 census has not yet been released, 26 percent of all Spanish speakers, 29.9 percent of all Chinese speakers, and 28.2 percent of all Vietnamese speakers reported that they spoke English ''not well'' or ''not at all'' in response to the 1990 census.

Language for LEP persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally-funded programs and activities. The federal government funds an array of programs, services, and activities that can be made accessible to otherwise eligible LEP persons. The federal government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government programs, services, and activities. HUD recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This Guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons. The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for LEP individuals. These are the same criteria HUD will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

As with most government initiatives, guidance on LEP requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, HUD must ensure that federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally-assisted programs. Second, HUD must achieve this goal while finding constructive methods to reduce the costs of LEP

requirements on small businesses, small local governments, or small nonprofits that receive federal financial assistance.

There are many productive steps that the federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally-assisted programs, threatening the critical functions that the programs strive to provide. To that end, HUD plans to continue to provide assistance and guidance in this important area. In addition, HUD plans to work with representatives of state and local governments, public housing agencies, assisted housing providers, fair housing assistance programs, and other HUD recipients, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, HUD intends to explore how language assistance measures, resources, and cost-containment approaches developed with respect to its own federally-conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small nonprofits. An interagency working group on LEP has developed a Web site, *http://www.lep.gov,* to assist in disseminating this information to recipients, federal agencies, and the communities being served.

Many persons who commented on the DOJ's proposed LEP guidance which was published January 16, 2001 (66 FR 3834), later published for additional public comment on January 18, 2002 (67 FR 2671), and published in final form on June 18, 2002 (67 FR 41455), have noted that some in the public have interpreted the case of *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), as implicitly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities. DOJ and HUD have taken the position that this is not the case, for the reasons explained below. Accordingly, HUD will strive to ensure that federally-assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with LEP.

II. Legal Authority

Section 601 of Title VI provides that no person shall ''on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity ''to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability'' (42 U.S.C. 2000d–1).

HUD regulations promulgated pursuant to section 602 forbid recipients from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin'' (24 CFR 1.4).

The U.S. Supreme Court, in *Lau* v. *Nichols,* 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of HUD, 24 CFR 1.4, to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau,* a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally-funded educational programs.

On August 11, 2000, Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency,'' was issued and published on August 16, 2000, at 65 FR 50121. Under that order, every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' or from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.''

On that same day, DOJ issued a general guidance document addressed to ''Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Order. The DOJ document is titled, ''Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency,'' (DOJ LEP Guidance) published on August 16, 2000, at 65 FR 50123.

Subsequently, federal agencies raised questions regarding the requirements of the Order, especially in light of the U.S. Supreme Court's decision in *Alexander* v. *Sandoval,* 532 U.S. 275 (2001). On October 26, 2001, the Assistant Attorney General for the Civil Rights Division, issued a memorandum for ''Heads of Departments and Agencies, General Counsels and Civil Rights Directors,'' that clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval.* This Guidance noted that some have interpreted *Sandoval* as implicitly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities. *See, e.g., Sandoval,* 532 U.S. at 286, 286 n.6 (''[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid.''). This Guidance, however, makes clear that the DOJ disagreed with this interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of federal grant agencies to enforce their own implementing regulations. The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities—the Executive Order remains in force.

This HUD policy is published pursuant to Title VI, Title VI regulations, and Executive Order 13166. It is consistent with the DOJ's, ''Policy Guidance Document on Enforcement of National Origin Discrimination Against

Persons with Limited English Proficiency,'' published on August 16, 2000, at 65 FR 50123, and the DOJ LEP Guidance issued on June 18, 2002, and published on June 18, 2002, at 67 FR 41457.

III. Who Is Covered?

HUD's regulation, 24 CFR part 1, ''Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development—Effectuation of Title VI of the Civil Rights Act of 1964,'' requires all recipients of federal financial assistance from HUD to provide meaningful access to LEP persons. Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in this LEP Guidance are to additionally apply to the programs and activities of federal agencies, including HUD. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of HUD assistance include, for example:

- State and local governments;
- Public housing authorities;
- Assisted housing providers;
- Profit and nonprofit organizations; and
- Other entities receiving funds directly or indirectly from HUD.

Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient (*e.g.*, Entitlement Community Development Block Grant, State Block Grant, State Community Development Block Grant, and HOME Recipients' subrecipients are covered).

Coverage extends to a recipient's entire program or activity, (*i.e.*, to all parts of a recipient's operations). This is true even if only one part of the recipient receives the federal assistance.

Example: HUD provides assistance to a state government's Department of Community Development to improve a particular public facility. All of the operations of the entire state Department of Community Development—not just the particular facility—are covered. However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated (42 U.S.C. 2000d–1). Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally-assisted services to LEP persons.

IV. Who Is a Limited English Proficient Individual?

Persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be LEP, entitled to language assistance with respect to a particular type of service, benefit, or encounter. Examples of populations likely to include LEP persons who are encountered and/or served by HUD recipients and should be considered when planning language services include, but are not limited to:

- Persons who are seeking housing assistance from a public housing agency or assisted housing provider or are current tenants in such housing;
- Persons seeking assistance from a state or local government for a rehabilitation grant for their home;
- Persons who are attempting to file a housing discrimination complaint with a local Fair Housing Assistance Program grantee;
- Persons who are seeking supportive services to become first-time homebuyers;
- Persons seeking housing related social services, training, or any other assistance from HUD recipients; and
- Parents and family members of the above.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this Guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. HUD recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

A. The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons ''eligible to be served, or likely to be directly affected, by'' a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by HUD as the recipient's jurisdiction or service area. However, where, for instance, a public housing project serves a large LEP population, the appropriate service area for LEP services is most likely the public housing project neighborhood, and not the entire population served by the public housing agency. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. Appendix A provides examples to assist in determining the relevant service area. When considering the number or proportion of LEP persons in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the recipient.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority

populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from State and local governments. The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by LEP persons. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English. Community agencies, school systems, grassroots and faith-based organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

B. The Frequency With Which LEP Individuals Come Into Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

C. The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP persons, the more likely language services are needed. The obligations to communicate rights to a person who is being evicted differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by HUD, another federal, state, or local entity, or the recipient to make a specific activity compulsory in order to participate in the program, such as filling out particular forms, participating in administrative hearings, or other activities, can serve as strong evidence of the program's importance.

D. The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, ''reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ''fixed'' later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. Recipients have two main ways to provide language services: oral interpretation either in person or via telephone interpretation service (hereinafter ''interpretation''); and written translation (hereinafter ''translation''). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a public housing provider in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary public tour of a recreational

facility—in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral, and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

1. Competence of Interpreters

When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person and understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting or to the extent their position requires or both. Many languages have ''regionalisms,'' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some courtroom or legal terms and the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate; and
- Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in court, administrative hearings, or law enforcement contexts).

Some recipients may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, the use of certified interpreters is strongly encouraged. For those languages in which no formal accreditation or certification currently exists, recipients should consider a formal process for establishing the credentials of the interpreter. Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in an abused woman's shelter, for example, must be extraordinarily high, while the quality and accuracy of language services in a recreational program need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for ''timely'' applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of HUD recipients providing housing, health, and safety services, and when important legal rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staff person available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

2. Hiring Bilingual Staff

When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as persons who take public housing or Section 8 applications, with staff who are bilingual and competent to communicate directly with LEP persons in their own language. If bilingual staff is also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual intake specialist would probably not be able to perform effectively the role of an administrative hearing interpreter and intake specialist at the same time, even if the intake specialist were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff is fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

3. Hiring Staff Interpreters

Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

4. Contracting for Interpreters

Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

5. Using Telephone Interpreter Services

Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

6. Using Community Volunteers

In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

7. Use of Family Members or Friends as Interpreters

Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP persons may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.*, sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. For example, special circumstances may raise additional serious concerns regarding the voluntary nature, conflicts of interest, and privacy issues surrounding the use of family members and friends as interpreters, particularly where an important right, benefit, service, disciplinary concern, or access to personal or law enforcement information is at stake. In addition to ensuring competency and accuracy of the interpretation, recipients should take these special circumstances into account when determining whether a beneficiary makes a knowing and voluntary choice to use another family member or friend as an interpreter. Furthermore, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence or other criminal matter. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For HUD recipient programs and activities, this is particularly true in a courtroom, an administrative hearing, or situations in which health, safety, or access to important housing benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when a property manager/or housing authority security or local police respond to a domestic disturbance. In such a case, use of family members or neighbors to interpret for the alleged victim, perpetrator, or witnesses may raise serious issues of competency, confidentiality, and conflict of interest and is thus inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children) or friends often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary tour of a community recreational facility built with Community Development Block Grant (CDBG) funds offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his/her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for legal reasons,

or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language). It should be kept in mind that many LEP persons may not be able to read their native languages and back-up availability of oral interpretation is always advantageous.

1. What Documents Should Be Translated?

After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

- Consent and complaint forms;
- Intake forms with the potential for important consequences;
- Written notices of rights, denial, loss, or decreases in benefits or services, and other hearings;
- Notices of eviction;
- Notices advising LEP persons of free language assistance;
- Leases and tenant rules; and/or
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is ''vital'' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for certain recreational activities should not generally be considered vital documents, whereas applications for housing could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of ''meaningful access.'' Lack of awareness that a particular program, right, or service exists may effectively deny LEP persons meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, grassroots and faith-based organizations, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

2. Into What Languages Should Documents Be Translated?

The languages spoken by the LEP persons with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

3. Safe Harbor

Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations. The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider: whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Therefore, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be

provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The HUD recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the 5 percent trigger in (a), the recipient does not translate vital written materials, but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and are reasonable. For example, housing facilities should, where appropriate, ensure that leases have been explained to LEP residents, at intake meetings, for instance, prior to taking adverse action against them.

4. Competence of Translators

As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary. For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism. Competence can often be ensured by having a second, independent translator ''check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ''back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning. For instance, there may be languages that do not have an appropriate direct translation of some English language terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost-effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful. Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP persons and may reduce costs.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may require translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, *e.g.*, information or documents of HUD recipients regarding certain safety issues and certain legal rights or programmatic or other obligations). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons (''LEP plan'') for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain HUD recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP

individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom they have contact. One way to determine the language of communication is to use language identification cards (or ''I speak'' cards), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say, ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both Vietnamese and English, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau ''I speak'' card can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available;
- How staff can obtain those services;
- How to respond to LEP callers;
- How to respond to written communications from LEP persons;
- How to respond to LEP persons who have in-person contact with recipient staff; and
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures; and
- Staff having contact with the public is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of their orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language that LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in common areas, offices, and anywhere applications are taken. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in geographic areas with high volumes of LEP persons seeking access to the recipient's major programs and activities. For instance, signs in offices where applications are taken could state that free language assistance is available. The signs should be translated into the most common languages encountered. The signs should explain how to receive language assistance. The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm.* These signs could, for example, be modified for recipient use;
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents;
- Working with grassroots and faith-based community organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services;
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them;
- Including notices in local newspapers in languages other than English;
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them; and
- Presentations and/or notices at schools and grassroots and faith-based organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP persons, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community that the plan serves.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in the housing jurisdiction geographic area or population affected or encountered;
- Frequency of encounters with LEP language groups;
- Nature and importance of activities to LEP persons;
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed;
- Whether existing assistance is meeting the needs of LEP persons;
- Whether staff knows and understands the LEP plan and how to implement it; and
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by HUD through the procedures identified in the Title VI regulations. These procedures include complaint

investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that HUD will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. The Office of Fair Housing and Equal Opportunity is responsible for conducting the investigation to ensure that recipients are in compliance with civil rights related programs requirements. If the investigation results in a finding of compliance, HUD will inform the recipient in writing of this determination, including the basis for the determination. HUD uses voluntary methods to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, HUD must inform the recipient of the noncompliance through a ''Letter of Findings'' that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HUD must secure compliance through the termination of federal assistance after the HUD recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. HUD engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, HUD proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, HUD's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP persons, HUD acknowledges that the implementation of a comprehensive system to serve LEP persons is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally-assisted programs and activities for LEP persons, HUD will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, HUD recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the housing, health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally-assisted programs and activities.

IX. Application to Specific Types of Recipients

Appendix A of this Guidance provides examples of how the meaningful access requirement of the Title VI regulations applies to HUD-funded recipients. It further explains how recipients can apply the four factors to a range of situations to determine their responsibility for providing language services in each of these situations. This Guidance helps recipients identify the population they should consider when determining the extent and types of services to provide. For instance, it gives examples on how to apply this guidance in situations like:

- Holding public meetings on the Consolidated Plans for Community Planning and Development Programs (CDBG, HOME, Housing Opportunity for Persons With AIDS (HOPWA), and Emergency Shelter Grants (ESG));
- Interviewing victims of housing discrimination;
- Helping applicants to apply for public housing units;
- Explaining lease provisions; and
- Providing affirmative marketing housing counseling services.

Dated: November 10, 2003.

Carolyn Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

Appendix A: Application of Limited English Proficiency (LEP) Guidance for HUD Recipients

Introduction

A wide range of entities receives federal financial assistance through HUD. HUD provides assistance to the following types of recipients, among others: assisted housing providers; public housing agencies; state and local governments; nonprofit organizations, including housing counseling agencies and grassroots community-based and faith-based organizations; state and local fair housing agencies; and providers of a variety of services. All HUD-funded recipients are required to certify to nondiscrimination and affirmatively furthering fair housing, either through the Office of Community Planning and Development's (CPD's) Consolidated Plan, (24 CFR 91.225 (a)(1) and (b)(6), 91.325(a)(1), 91.425(a)(i)); the public housing agency plans processes (24 CFR 903.7(o)); or the certifications required in the competitive programs funded through the Super Notice of Funding Availability (SuperNOFA). [Note: HUD publishes the SuperNOFA on an annual basis. The non-discrimination and the affirmative furthering fair housing requirements are found in the General Section of the SuperNOFA]. The website for the SuperNOFA is: *http://www.hud.gov/library/bookshelf18/supernofa/index.cfm.* This LEP Guidance does not change current civil rights related program requirements contained in HUD regulations.

This Appendix provides examples of how HUD recipients might apply the four-factor analysis described in the general guidance. The Guidance and examples in this Appendix are not meant to be exhaustive and may not apply in some situations. CPD's citizen participation plan requirement, in particular, specifically instructs jurisdictions that receive funds through the Consolidated Plan process to take appropriate actions to encourage the participation of ''* * * non-English speaking persons * * *'' (24 CFR 91.105(a)(2)(ii), 91.115(a)(2)). Such recipients may, therefore, have processes in place to address the needs of their LEP beneficiaries that already take into consideration the four-factor analysis and meet the Title VI and regulatory requirements described in this Guidance.

This Guidance does not supplant any constitutional, statutory, or regulatory provisions that may require LEP services. Rather, this Guidance clarifies the Title VI and regulatory obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP persons beyond those required by the Constitution or by statutes and regulations other than Title VI and the Title VI regulations.

Tribes and tribally-designated housing entities (TDHEs) are authorized to use federal housing assistance made available under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA, 25 U.S.C. 4101–4212) for low-income housing programs or activities for the specific benefit of tribal members or other Native Americans. Programs or activities funded in whole or in part with federal assistance made available under NAHASDA are exempt from Title VI and Title VIII of the Civil Rights Act of 1968. Although Title VI may not apply to housing programs undertaken by these entities under NAHASDA, this Guidance may be a helpful technical assistance tool in determining whether and to what degree language assistance may be appropriate to ensure meaningful access by otherwise eligible low-income Native Americans.

For many members of the public, exposure to housing and social service programs

begins and ends with their interactions with HUD recipients that are responding to a request for services or assistance or are conducting education and community outreach activities. The common thread running through interactions between the public and HUD recipients is the exchange of information. Recipients of HUD assistance, dependant on circumstances, have an obligation to provide appropriate types and levels of language services to LEP persons to ensure that they have meaningful access to, and choice of, housing and other HUD-funded programs. Language barriers can, for example, prevent persons from learning of housing opportunities or applying for and receiving such opportunities, learning of environmental or safety problems in their communities and of the means available for dealing with such problems, or effectively reporting housing discrimination to the local fair housing agency or HUD, thus hindering investigation of these allegations.

Many recipients already provide language services in a wide variety of circumstances to obtain information effectively and help applicants obtain suitable housing or support services. For example, public housing agencies may have leases available in languages other than English as well as interpreters available to inform LEP persons of their rights and responsibilities. In areas where significant LEP populations reside, agencies may have forms and notices in languages other than English or they may employ bilingual intake personnel, housing counselors, and support staff. Such recipients may therefore have processes in place to address the needs of their LEP beneficiaries that meet the Title VI and regulatory requirements described in this Guidance. Such existing processes and their observed results can form a strong basis for applying the four-factor analysis and complying with the Title VI regulations.

General Principles

The touchstone of the four-factor analysis is reasonableness based upon: (a) The specific needs and capabilities of the LEP population among the beneficiaries of HUD programs (tenants, applicants, community residents, complainants, *etc.*); (b) the program purposes and capabilities of the HUD-funded recipients providing the services to the LEP population; and (c) local housing, demographic, and other community conditions and needs. Accordingly, the analysis cannot provide a single uniform answer on how service to LEP persons must be provided in all programs or activities in all situations or whether such service need be provided at all. Each HUD recipient's evaluation of the need and level of LEP services for each process in its services must be highly individualized.

Before giving specific program examples, several general points should assist the wide variety of HUD recipients in applying this analysis.

Factors (1) and (2): Target Audiences

In evaluating the target audience, the recipient should take into account the number and proportion of LEP persons served or to be served in the target population as well as the frequency with which this target audience will or should be served.

Factor (1): For most recipients, the target audience is defined in geographic rather than programmatic terms. In many cases, even if the overall number or proportion of LEP persons in the local area is low, the actual number of LEP persons served by the program may be high.

HUD recipients are required to reach out to, educate, and affirmatively market their services to potential beneficiaries in the geographic area who are least likely to apply for or receive the benefits of the program without such affirmative marketing (24 CFR 200.625, 24 CFR 92.351, 24 CFR 903. 2(d)(1) and (2)). In many cases, those least likely to apply for a benefit are LEP persons. In addition, in some cases where there are few LEP persons in the immediate geographic area, affirmative marketing may require marketing to residents of adjoining areas, communities, or neighborhoods (24 CFR 200.625, 24 CFR 92.351, 903.2(d)(1) and (2)).

The programs of many recipients require public meetings and input (24 CFR 91, subpart B; 24 CFR 903.13 (a); 24 CFR, part 964). Even within the large geographic area covered by a city government, certain target areas may have concentrations of LEP persons. These persons may be those who might be most affected by the issue being discussed.

In addition, some programs are specifically targeted to reach a particular audience (*e.g.*, persons with HIV, the elderly, residents of high crime areas, persons with disabilities, and minority communities). In some communities, these populations may disproportionately be LEP persons.

Factor (2): Frequency of contact should be considered in light of the specific program or the geographic area being served. Some education programs or complaint processing may only require a single or limited interaction with each LEP individual served. Housing, counseling, and supportive services programs require on-going communication. In the former case, the type and extent of LEP services may be of shorter duration, even for a greater number of LEP persons, than in the latter case and decisions must be made accordingly.

Factor (3): Importance of Service/Information/Program/Activity

Given the critical role housing plays in maintaining quality of life, housing and complementary housing services rank high on the critical/non-critical continuum. However, this does not mean that all services and activities provided by HUD recipients must be equally accessible in languages other than English. For example, while clearly important to the quality of life in the community, certain recreational programs provided by a HUD recipient may not require the same level of interpretive services as does the recipient's underlying housing service. Nevertheless, the need for language services with respect to these programs should be considered in applying the four-factor analysis.

Factor (4): Costs vs. Resources and Benefits

The final factor that must be taken into account is the cost of providing various services as opposed to the resources available to the HUD recipient providing the service.

Type of Program: There are some programs for which translation and interpretation are an integral part of the funded program such that services should be provided in some way to any client that requires them. In important programs or activities (*i.e.*, tenant selection and assignment, homeownership counseling, fair housing complaint intake, conflict resolution between tenant and landlords, *etc.*) that require one-on-one contact with clients, written translation and verbal interpretation services should be provided consistent with the four-factor analysis used earlier. Recipients could have competent bilingual or multilingual employees or community translators or interpreters to communicate with LEP persons in languages prevalent in the community. In some instances, a recipient may have to contract or negotiate with other agencies for services for LEP persons.

Outreach: Affirmative marketing activities, as described above, require, at a minimum, written materials in other languages (24 CFR 200.625, 24 CFR 92.351, 24 CFR 903.2 (d)(1) and (2)). As with counseling, affirmative marketing in large LEP communities could be fruitless without translation of outreach materials. Preferably, outreach workers would speak the language of the people to whom they are marketing.

Size of Program: A major issue for deciding on the extent of translation/interpretation services is the size of the program. A large public housing agency (PHA) may be expected to have multilingual employees representing the LEP persons who may reside in the communities they serve. These employees may be involved in all activities: affirmative marketing, taking and verifying applications, counseling, explaining leases, holding tenant meetings, and on-going tenant contact, as well as translating documents into applicable languages. Similarly, a funded recipient receiving millions of dollars in CDBG Program money may be expected to provide translation/interpretation services in major local languages and have bilingual staff in those languages. Recipients with limited resources (*i.e.*, PHAs with a small number of units, or small nonprofit organizations) should not be expected to provide the same level and comprehensiveness of services to the LEP population, but should consider reasonable steps, under the four-factor analysis, they can take in order to provide meaningful access.

Relevance of Activity to the Program: A program with monthly information sessions in a community with many LEP persons speaking the same language should consider employing a bilingual employee who can hold these sessions in the LEP language. Alternatively, if a community's major LEP language does not have many applicants for the program, having an interpreter at sessions only when needed may be sufficient. (For example, the program could announce in major languages in any public notice of the meeting that anyone in need of an interpreter should call a certain number before the

meeting to request one—and ensure that someone at that number can communicate with the person.)

Availability/Costs of Services: In a community with very few LEP persons speaking a particular language, interpretation/translation into a specific language and a HUD recipient with very few resources, the provision of service should be targeted at the most important activities. Recipients may decide, as appropriate, to provide those services through agreements with competent translators and interpreters in community-based organizations or through telephonic interpretation services.

Services Provided: HUD recipients have a variety of options for providing language services. Under certain circumstances, when interpreters are required and recipients should provide competent interpreter services free of cost to the LEP person, LEP persons should be advised that they may choose either to use a competent interpreter provided free by the recipient or, at their own expense, secure the assistance of an interpreter of their own choosing. If the LEP person decides to provide his or her own interpreter, the provision of this choice to the LEP person and the LEP person's election should be documented in any written record generated with respect to the LEP person. Although LEP persons may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. Family and friends may not be available when and where they are needed, or they may not have the ability to interpret program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, family, or financial information to a family member, friend, or member of the local community.

Similarly, there may be situations where a HUD recipient's own interests justify program provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete, and accurate interpretation of information is critical for lease enforcement, or at group meetings dealing with vital issues, such as pending displacement, a recipient might provide its own, independent interpreters, regardless of what recipients choose. This should ensure that information has been interpreted completely and is legally accurate.

In emergency situations that are not reasonably foreseeable, the recipient may have to rely temporarily on non-professional language services. However, reliance on children is especially discouraged unless there is an extreme emergency and no language proficient adults are available.

While all language services need to be competent, the greater the potential consequences, the greater the need to monitor interpretation services for quality. For example, it is important that interpreters of legal concepts be highly competent to translate legal and lease enforcement concepts as well as be extremely accurate in their interpretation when discussing relocation and displacement issues. It may be sufficient, however, for a desk clerk who is fully bilingual, but not skilled at interpreting, to help an LEP person complete an application in the language the LEP person and bilingual person have in common.

Applying the Four-Factor Analysis

While all beneficiaries are important, the four-factor analysis requires prioritizing so that language services are targeted where most needed because of the nature and importance of the particular activity involved in relation to the costs of providing the service.

This section provides examples of promising practices in which recipients may engage. Grantees or funded recipients are responsible for ensuring meaningful access to all portions of their program or activity, not just the portions to which HUD funds are targeted. So long as the language services are accurate, timely, and appropriate in the manner outlined in this guidance, the types of promising practices summarized below can assist recipients in meeting the meaningful access requirements of Title VI and the Title VI regulations.

Office of Fair Housing and Equal Opportunity

The Fair Housing Assistance Program (FHAP): FHAP provides funds to state and local agencies that administer fair housing laws that are substantially equivalent to the federal Fair Housing Act.

A local FHAP serves a small metropolitan area that has a population that is 3 percent Korean speaking, 25 percent Spanish-speaking, and 72 percent English speaking. One of the FHAP agency's primary responsibilities is to process fair housing discrimination complaints. The FHAP office has many Hispanic complainants who are LEP and Spanish-speaking; therefore, it has hired a Hispanic intake clerk who is bilingual in Spanish and English. The Fair Housing Poster and the complaint form have been translated into Spanish. The office has a contract with a nonprofit Hispanic organization for interpreters on an as-needed basis its education and outreach activities to the Hispanic community. FHAP organizations are small and have limited resources. In competing for the available resources, the FHAP chose not to translate the material into the language of the Korean population this year. However, it has plans to translate material into the Korean language in coming years to address the accessibility needs of the LEP population.

The Fair Housing Initiatives Program (FHIP): FHIP assists fair housing activities that increase compliance with the Fair Housing Act and with the substantially equivalent fair housing laws administered by state and local government agencies under the Fair Housing Assistance Program (FHAP). FHIP awards funds competitively, and these funds enable the recipients to carry out activities to educate and inform the public and housing providers of their fair housing rights and responsibilities.

A community organization in a large metropolitan area had received FHIP funds to develop an education curriculum to assist newly arrived immigrants. Data showed that non-English speaking persons were having difficulty in applying and securing housing in the area. The organization had identified a large Hispanic clientele in the area that needed this service. It had a well-developed program for this LEP population. However, the community's population was changing. The recipient found that there was also a large community of recent immigrants from Cambodia who were also in need of language services. To address this need, the FHIP partnered with Asian Action Network, a community-based social service agency, to translate materials and to present free seminars at the local public library. In addition, if needed, the Asian Action Network had on its staff a Cambodian-speaking counselor who was able to provide interpretation services.

Office of Public and Indian Housing

HOPE VI: The HOPE VI Revitalization of Distressed Public Housing Program provides revitalization and demolition-only grants on a competitive basis for eligible PHAs that operate public housing units. During the HOPE VI lifecycle, PHAs are required to communicate with all tenants, including LEP tenants, through informational meetings that describe both the proposed project and the rights of the tenants during every stage of the application and implementation process. All residents need to be educated about both the HOPE VI project, and their right to be relocated into decent, safe and sanitary housing, and how they can return to the new project once it is completed.

A PHA is planning to demolish a 400-unit public housing project and construct a 375-unit HOPE VI mixed-finance development and other amenities on the site. The 400-unit building is still occupied by a tenant population of which 55 percent are Spanish-speaking families. For a number of years, the PHA had in place bilingual employees in its occupancy office, as well as leases and other written documents translated into Spanish. Under the new requirements, the PHA now needs to translate public notices and other documents into Spanish, since many of the families are newly arrived immigrants from Latin America.

Public Housing: There are approximately 3,400 PHAs in the United States that provide a majority of the housing to low and very low-income families. For example, a PHA in a large metropolitan area has Hispanic, Chinese, and Vietnamese tenants. All tenants sign a lease before they can live in public housing. The lease details the rules and requirements that the PHA and tenants must follow and ensures that the PHA and tenants are provided all the protections to which they are entitled. Additionally, the written lease ensures that all tenants are treated fairly. The PHA makes every effort to ensure that tenants understand the rules and requirements. The PHA has its lease and rental notices translated into Spanish, Chinese, and Vietnamese and it has a procedure to access interpreters for these languages if oral discussions of the lease are necessary.

Housing Choice Voucher Program: The Housing Choice Voucher Program is the

federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market.

For example, a PHA administers a Housing Choice Voucher Program and has recently received an additional 100 vouchers. The PHA affirmatively markets the availability of the housing choice vouchers to all families living in its jurisdiction. It places a public service announcement in English, Spanish, Chinese, or Vietnamese in the local general circulation, Spanish, Chinese, or Vietnamese newspapers and radio and TV stations, as applicable.

Office of Community Planning and Development

Consolidated Plan: Consolidated Planning is a strategy for holistic community planning. Each community's Consolidated Plan is built upon public participation and input. When planning the required public hearings, jurisdictions must also identify how the needs of LEP residents will be met in the case of public hearings where a significant number of LEP residents can be reasonably expected to participate (24 CFR 91, Subpart B, ''Citizen Participation and Consultation''). Other activities surrounding public hearings should also be made available to persons with LEP, such as (a) publication of translated notification of the public hearings, and (b) translation of draft and final action and consolidated plans and dissemination of these documents to persons and appropriate organizations in the LEP community.

The State Community Development Block Grant (CDBG) program is designed to assist small communities and rural areas in funding a wide variety of activities intended to promote community economic development. In the State CDBG program, HUD makes grants to states, which then distribute funds to units of general local government.

All eligible activities in the State CDBG program must meet one of three statutory objectives specified in the CDBG authorizing legislation: principally benefit low- and moderate-income persons, aid in the prevention of elimination of slums or blight, or meet other community development needs having a particular urgency.

State CDBG grant recipients are encouraged to reach out to LEP persons through local alternative language newspapers. In addition, expenses associated with providing interpretive services to LEP persons may be considered program delivery or administration costs and, therefore, may be paid with CDBG funds. For instance, one state CDBG grant recipient chooses to provide case management services to homeless families and individuals, and allocates part of these funds to provide advocacy and interpretative services for LEP persons.

Housing Opportunities for Persons With AIDS (HOPWA): HOPWA is a tenant-based rental voucher program specifically designed for persons who are HIV positive or who have AIDS. A major city has been operating services affecting persons with AIDS and such services have been an integral part of its Consolidated Plan. However, it recently learned from a national study that 20 percent of its 2,000 HIV-infected persons are LEP persons. The city previously had not contacted these people about their needs. In formulating its Consolidated Plan, the city's Community Development Department contacted both the Department of Health and the city's leading AIDS-related service provider for assistance in reaching out to this population. The city offered to allocate additional sums from its HOPWA formula grant to fund bilingual interpreters and health outreach workers who would contact the LEP persons living with HIV and minister to their housing-related needs. Also, as part of its citizen participation plan, the city offered to conduct a multilingual meeting at which institutions involved in AIDS-related housing and services would participate.

HOME Investment Partnership Program: In general, under the HOME Investment Partnerships Program, HUD allocates funds by formula among eligible state and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing. Families, including LEP families, may obtain homeownership and rental housing opportunities from participating jurisdictions (PJs). Under the program requirements, PJs are required to implement affirmative marketing strategies, under which they identify groups within the eligible population that are least likely to apply and conduct special outreach efforts through advertising in local media, including media targeted at LEP citizens (24 CFR 92.351).

A small HOME participating jurisdiction is using its HOME funds to implement a tenant-based rental assistance (TBRA) program. Under TBRA, the assisted tenant may move from a dwelling unit, but retains the right to continued assistance. The TBRA assistance also includes the security deposit. The HOME PJ, as part of its affirmative marketing strategy, has submitted advertising to the local Spanish language newspapers and radio station that serve the community's small but growing Hispanic population. Since the costs of implementing the affirmative marketing strategy are eligible costs under the program regulations, the PJ is increasing its budget to train occupancy staff to address issues faced by LEP applicants and to hire a bilingual staff member.

Office of Housing

Single-Family Housing Counseling Program: HUD provides funds to housing counseling agencies that assist persons and families in specific geographic areas to enable them to buy homes and to keep homes they already have purchased. This requires one-on-one and group counseling on home-selection skills, understanding mortgages, understanding legal ramifications of various documents, establishing a budget, housekeeping and maintenance skills, understanding fair housing rights, *etc.*

In a majority-Hispanic community, *La Casa* has been the only HUD-funded counseling agency, providing these services for many years. It has bilingual staff to serve the largely Hispanic population. Frequently clients from a neighboring low-income community, which is primarily African-American, also uses its services, since the agency is well-known in the area. However, over the past few years, many low-income Iranians have been moving into the neighboring community. A housing counseling agency is required to provide one-on-one counseling services as the nature of its program. It is also required to outreach to those potential beneficiaries who are least likely to apply for its services. As a relatively small agency, *La Casa* should employ at least one person or have regular access to a person who can interpret between English and Farsi. This person should be visiting the Iranian communities, and contacting and working through the local agencies to affirmatively market La Casa's program. This person should also arrange to get key materials translated and provide counseling and interpretation services, as needed.

Supportive Housing for the Elderly: The Section 202 Supportive Housing for the Elderly Program funds the construction of multifamily projects that serve elderly persons. Project sponsors are required to affirmatively market their services and housing opportunities to those segments of the elderly population that are identified as least likely to apply for the housing without special outreach. Even more importantly, many LEP elderly may require care from bilingual medical or support services staff, and recipients may devote considerable financial and other resources to provide such assistance.

The sponsor of a Section 202 Supportive Housing for the Elderly project identifies in its Affirmative Fair Housing Marketing Plan the city's large numbers of East and South Asian immigrants as least likely to apply for the new housing without special outreach. After examining census and other data and consulting with the city's Office of Immigrant Affairs, the sponsor learns that the 1,000 of the 5,000 South and East Asian families have at least one elderly relative that may be eligible for the new units. The sponsor hires translators fluent in Hindi, Urdu, Dari, Vietnamese, and Chinese to translate written materials and advertising for the local press in those languages. The recipient also partners with community-based organizations that serve the city's East and South Asian immigrants to arrange for interpreters at meetings.

[FR Doc. 03–31267 Filed 12–18–03; 8:45 am]

BILLING CODE 4210–28–P

Federal Register

Friday,
December 19, 2003

Part VI

Department of Housing and Urban Development

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4889–N–01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document designates ''Difficult Development Areas'' and ''Qualified Census Tracts'' for purposes of the Low-Income Housing Tax Credit (LIHTC) under section 42 of the Internal Revenue Code of 1986 (the Code). The United States Department of Housing and Urban Development (HUD) makes new Difficult Development Area designations annually and makes Qualified Census Tract Designations at this time due to the recent release of relevant data from the 2000 Census.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions: Kurt G. Usowski, Associate Deputy Assistant Secretary for Economic Affairs, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–6000, telephone (202) 708–2770, e-mail *Kurt_G._Usowski@hud.gov.* For specific legal questions pertaining to section 42: Office of the Associate Chief Counsel, Passthroughs & Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW.; Washington, DC 20224, telephone (202) 622–3040, fax (202) 622–4753. For questions about the ''HUBZones'' program: Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, SW., Washington, DC 20416, telephone (202) 205–8885, fax (202) 205–7167, e-mail *hubzone@sba.gov.* A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about Difficult Development Areas and Qualified Census Tracts are available electronically on the Internet (World Wide Web) at *http://www.huduser.org/datasets/qct.html.*

SUPPLEMENTARY INFORMATION:

This Document

The designations of Difficult Development Areas in this notice are based on fiscal year (FY) 2003 Fair Market Rents (FMRs), FY 2003 income limits, and 2000 Census population counts as explained below. This notice designates Difficult Development Areas for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands. The designations of Qualified Census Tracts in this notice are based on 2000 Census data. This notice designates Qualified Census Tracts for American Samoa, Guam, and the Northern Mariana Islands. The 2003 Qualified Census Tracts designated for the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands published December 12, 2002, at 67 FR 76452 are unchanged by this notice.

2000 Census

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan counties are used in the designation of Difficult Development Areas. The Census Bureau has recently released the data needed to update Qualified Census Tract designations for American Samoa, Guam, and the Northern Mariana Islands, so this notice makes new qualified Census Tract designations in these areas based on 2000 Census data. The Office of Management and Budget (OMB) published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03–04 on June 6, 2003. The Census Bureau has not yet released official data on 1999 median incomes in the newly defined metropolitan areas and nonmetropolitan areas of states. Also, the FY 2003 FMRs and 2003 income limits used to designate Difficult Development Areas are based on the Metropolitan Statistical Areas (MSA) and Primary Metropolitan Statistical Areas (PMSA) definitions established by OMB in OMB Bulletin No. 99–04 on June 30, 1999. Therefore, for the purposes of designating Difficult Development Areas and Qualified Census Tracts ''metropolitan areas'' will continue to be defined according to the MSA/PMSA definitions established by the OMB in OMB Bulletin No. 99–04 on June 30, 1999, until further notice.

Background

The U.S. Treasury Department and the Internal Revenue Service thereof are authorized to interpret and enforce the provisions of the Code, including the LIHTC found at section 42 of the Code (26 U.S.C. 42). The Secretary of HUD is required to designate Difficult Development Areas and Qualified Census Tracts by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas and Qualified Census Tracts for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD, as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allocated credit based on a statutory formula indicated at section 42(h)(3). States may carry forward unallocated credit derived from the credit ceiling for one year; if a certain portion of this unallocated credit is not used by then, this portion goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides section 42 credits derived from the credit ceiling, states may also provide section 42 credits to owners of buildings based upon the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond ''volume cap'' do not reduce the credit available from the credit ceiling.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the area median gross income (AMGI), or 40 percent of units must be rent restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term ''rent-restricted'' means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation

(*i.e.*, 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (*i.e.*, financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing projects or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends upon the individual's marginal tax rate). Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also deduct losses from the project.

The qualified basis represents the product of the ''applicable fraction'' of the building and the ''eligible basis'' of the building. The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low income-units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas, eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credit also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased up to 91 percent.

Section 42 of the Code defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. All designated Difficult Development Areas in MSAs/PMSAs may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan counties.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI or in which the poverty rate is at least 25 percent. There is a limit on the number of Qualified Census Tracts in any MSA or PMSA that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20 percent of the total population of the MSA/PMSA. For purposes of HUD designations of Qualified Census Tracts, all nonmetropolitan areas in a state are treated as if they constituted a single metropolitan area.

Explanation of HUD Designation Methodology

A. Qualified Census Tracts

In developing this list of LIHTC Qualified Census Tracts, HUD used 2000 Census data and the MSA/PMSA definitions established by the Office of Management and Budget in OMB Bulletin No. 99–04 on June 30, 1999. The LIHTC Qualified Census Tracts were determined as follows:

1. A census tract must have 50 percent of its households with incomes below 60 percent of the AMGI or have a poverty rate of 25 percent or more to be ''eligible.'' In metropolitan areas, HUD calculates 60 percent of AMGI by multiplying the MSA/PMSA median family income for 1999, as reported by the 2000 Census, by a factor of 0.6. Outside of metropolitan areas, HUD calculates 60 percent of AMGI by multiplying the state-specific, nonmetropolitan balance median family income by a factor of 0.6.

2. For each census tract, the percentage of households below the 60 percent income standard (the income criterion) was determined by (a) calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) calculating the number of households with incomes below the income standard.

3. For each census tract, the poverty rate was determined by dividing the population with incomes below poverty by the population for whom poverty status has been determined.

4. Qualified Census Tracts are those in which 50 percent or more of the households meet the income criterion or 25 percent or more of the population is in poverty, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. Eligible tracts are placed in one of two groups. The first group includes tracts that satisfy both the income and poverty criteria. The second group includes tracts that satisfy either the income criterion or the poverty criterion, but not both.

b. Tracts in the first group are ranked from lowest to highest on the income criterion. Then tracts in the first group are ranked from lowest to highest on the poverty criterion. The two ranks are averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In cases of tied combined ranks, more populous tracts are ranked above less populous ones.

c. Tracts in the second group are ranked from lowest to highest on the income criterion. Then tracts in the second group are ranked from lowest to highest on the poverty criterion. The two ranks are then averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In cases of tied combined ranks, more populous tracts are ranked above less populous ones.

d. The ranked first group is stacked on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

e. Working down the single, concatenated, ranked list of eligible tracts, census tracts are designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If a census tract is not designated because doing so would raise the percentage above 20 percent, then subsequent census tracts are considered to determine if one or more census tract(s) with smaller population(s) could

be designated without exceeding the 20 percent limit.

B. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared incomes with housing costs. HUD used 2000 Census population data and the MSA/PMSA definitions as published by the Office of Management and Budget in OMB Bulletin No. 99–04 on June 30, 1999, with the exceptions described in section D., below. The basis for these comparisons was the FY 2003 HUD income limits for Very Low-Income households and FMRs used for the section 8 Housing Assistance Payments program. The procedure used in making the Difficult Development Area calculations follows:

1. For each MSA/PMSA and each nonmetropolitan county, a ratio was calculated. This calculation used the FY 2003 two-bedroom FMR and the FY 2003 four-person VLIL.

a. The numerator of the ratio was the area's FY 2003 FMR. In general the FMR is based on the 40th percentile rent paid by recent movers for a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th percentile rent for purposes of improving the administration of HUD's Housing Choice Voucher program (see 66 FR 162) the 40th percentile rent is used for nationwide consistency of comparisons.

b. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where 120 percent of the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for nonmetropolitan counties.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 2000 population of all metropolitan areas and of all nonmetropolitan counties.

C. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas and Qualified Census Tracts, HUD applied various caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all nonmetropolitan counties.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio as described above was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus for both the designated metropolitan and nonmetropolitan Difficult Development Areas there may be a minimal overrun of the cap. HUD believes the designation of these additional areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 99–04 defining metropolitan areas:

> ''OMB establishes and maintains the definitions of the [Metropolitan Areas] solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions * * *. We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating federal funds.''

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas.

The following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Chicago, IL: DeKalb, Grundy, and Kendall Counties.
Cincinnati-Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant, and Pendleton Counties, Kentucky; and Ohio County, Indiana.
Dallas, TX: Henderson County.
Flagstaff, AZ–UT: Kane County, Utah.
New Orleans, LA: St. James Parish.
Washington, DC–MD–VA–WV: Clarke, Culpeper, King George, and Warren Counties, Virginia; and Berkely and Jefferson Counties, West Virginia.

Affected MSAs/PMSAs are assigned the indicator ''(part)'' in the list of Metropolitan Difficult Development Areas. Any of the excluded counties designated as difficult development areas separately from their metropolitan areas are designated by the county name.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) OMB defines MSAs/PMSAs according to county subdivisions or Minor Civil Divisions (MCDs) rather than county boundaries. Thus, when a New England county is designated as a Nonmetropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the Nonmetropolitan Difficult Development Area. Affected counties are assigned the indicator ''(part)'' in the list of Nonmetropolitan Difficult Development Areas. Also in the New England states, census tracts may be cut by MSA/PMSA boundaries. Only those LIHTC projects located in the part of the tract in the listed MSA/PMSA or nonmetropolitan area may be allowed the increase in basis. Affected tracts are marked with an asterisk (*) in the list of Qualified Census Tracts.

For the convenience of readers of this notice, the geographic definitions of designated Metropolitan Difficult Development Areas and the MCDs included in Nonmetropolitan Difficult Development Areas in the New England states are included in the list of Difficult Development Areas.

Certain nonmetropolitan county equivalent areas in Alaska for which FMRs and VLILs are calculated and thus form the basis of Difficult Development Area designations are no longer recognized as geographic entities by the Census Bureau. Therefore, no 2000 Census population counts are produced

for these areas. HUD estimates the 2000 population of these areas as follows:

1. The 2000 Population of Denali Borough (1,893) was allocated entirely to the Yukon-Koyukuk Census Area. The part of Denali Borough created from the Southeast Fairbanks Census Area was deemed uninhabited after examination of Census Block data for, and maps of, the area of Denali Borough formerly in the Southeast Fairbanks Census Area.

2. The population of Yakutat City and Borough (808) was allocated to the former Skagway-Yakutat-Angoon Census Area (680) and the Valdez-Cordova Census Area (128). The populations of Yakutat City and Borough Census Blocks located east of 141° longitude were allocated to the Skagway-Yakutat-Angoon Census Area. The populations of Yakutat City and Borough Census Blocks located west of 141° longitude were allocated to the Valdez-Cordova Census Area.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. Qualified Census Tracts are updated periodically to reflect changes in OMB's designations of metropolitan areas. Qualified Census Tracts are not being updated at this time to reflect the recent change in metropolitan area definitions (OMB Bulletin N0. 03–04, June 6, 2003) because the Census Bureau has not yet released official data on median incomes in the newly defined metropolitan areas and nonmetropolitan parts of states. This notice designates Qualified Census Tracts for American Samoa, Guam, and the Northern Mariana Islands based on 2000 Census data. The 2003 Qualified Census Tracts designated for the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands published December 12, 2002, at 67 FR 76452 are unchanged by this notice.

Effective Date

The lists of Difficult Development Areas and the list of Qualified Census Tracts are effective for allocations of credit made after December 31, 2003. In the case of a building described in section 42(h)(4)(B) of the Code, the lists are effective if the bonds are issued and the building is placed in service after December 31, 2003.

Interpretive Examples for Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose Difficult Development Area status with respect to projects described in section 42(h)(4)(B) of the Code. The examples are equally applicable to Qualified Census Tract designations.

(Case A) Project ''A'' is located in a newly designated 2004 Difficult Development Area. Bonds are issued for Project ''A'' on November 1, 2003, and Project ''A'' is placed in service March 1, 2004. Project ''A'' IS NOT eligible for the increase in basis otherwise accorded a project in this location because the bonds were issued BEFORE January 1, 2004.

(Case B) Project ''B'' is located in a newly designated 2004 Difficult Development Area. Project ''B'' is placed in service November 15, 2003. The bonds that will support the permanent financing of Project ''B'' are issued January 15, 2004. Project ''B'' IS NOT eligible for the increase in basis otherwise accorded a project in this location because the project was placed in service BEFORE January 1, 2004.

(Case C) Project ''C'' is located in an area that is a Difficult Development Area in 2003, but IS NOT a Difficult Development Area in 2004. Bonds are issued for Project ''C'' on October 30, 2003, but Project ''C'' is not placed in service until March 30, 2004. Project ''C'' is eligible for the increase in basis available to projects located in 2003 Difficult Development Areas because the first of the two events necessary for triggering the effective date for buildings described in section 42(h)(4)(B) of the Code (the two events being bonds issued and buildings placed in service) took place on October 30, 2003, a time when project ''C'' was located in a Difficult Development Area.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites and therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no FONSI is required.

Impact on Small Entities

The Secretary, in accordance with 5 U.S.C. section 605(b) (the Regulatory Flexibility Act), has reviewed and approved this notice, and in so doing certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of ''Difficult Development Areas'' and ''Qualified Census Tracts'' as required by section 42 of the Code, as amended, for use by political subdivisions of the states in allocating the Low-Income Housing Tax Credit. This notice places no new requirements on the states, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the notice either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. As a result, the notice is not subject to review under the order. The notice merely designates ''Difficult Development Areas'' and ''Qualified Census Tracts'' as required under section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the states in allocating the Low-Income Housing Tax Credit. The notice also details the technical methodology used in making such designations.

Dated: December 11, 2003.

Mel Martinez,

Secretary.

BILLING CODE 4210–62–P

2004 IRS SECTION 42(d)(5)(C) QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF: American Samoa

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Eastern District	9501.00	9504.00										
Manu'a District	9517.00	9518.00										
Swains Island	9520.00											
Western District	9510.00	9515.00										

NONMETROPOLITAN PART OF: Guam

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Guam	9508.00	9513.00	9515.00	9518.00	9522.00	9524.00	9526.00	9528.00	9530.00	9533.00	9534.00	9544.00
	9548.00	9554.00										

NONMETROPOLITAN PART OF: Northern Mariana Islands

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Northern Islands Municipality	9501.00											
Saipan Municipality	9507.00	9509.00	9510.00	9511.00	9512.00	9513.02						

2004 IRC Section 42(d)(5)(C) Metropolitan Difficult Development Areas

State	Metropolitan Area Name	Metropolitan Area Components			
AZ	Flagstaff, AZ-UT MSA (part)	Coconino County			
	Yuma, AZ MSA	Yuma County			
CA	Los Angeles-Long Beach, CA PMSA	Los Angeles County			
	Oakland, CA PMSA	Alameda County	Contra Costa County		
	Sacramento, CA PMSA	El Dorado County	Placer County	Sacramento County	
	Salinas, CA MSA	Monterey County			
	San Diego, CA MSA	San Diego County			
	San Francisco, CA PMSA	Marin County	San Francisco County	San Mateo County	
	San Jose, CA PMSA	Santa Clara County			
	San Luis Obispo-Atascadero-Paso Robles, CA MSA	San Luis Obispo County			
	Santa Barbara-Santa Maria-Lompoc, CA MSA	Santa Barbara County			
	Santa Cruz-Watsonville, CA PMSA	Santa Cruz County			
	Santa Rosa, CA PMSA	Sonoma County			
	Vallejo-Fairfield-Napa, CA PMSA	Napa County	Solano County		
FL	Miami, FL PMSA	Miami-Dade County			
	Orlando, FL MSA	Lake County	Orange County	Osceola County	Seminole County
MA	Barnstable-Yarmouth, MA MSA	BARNSTABLE COUNTY towns of	Barnstable city	Brewster town	Chatham town
		Dennis town	Eastham town	Harwich town	Mashpee town
		Orleans town	Sandwich town	Yarmouth town	

2004 IRC Section 42(d)(5)(C) Metropolitan Difficult Development Areas

State	Metropolitan Area Name	Metropolitan Area Components			
MA (cont.)	Boston, MA-NH PMSA	BRISTOL COUNTY towns of	Berkley town	Dighton town	Mansfield town
		Norton town	Taunton city		
		ESSEX COUNTY towns of	Amesbury town	Beverly city	Danvers town
		Essex town	Gloucester city	Hamilton town	Ipswich town
		Lynn city	Lynnfield town	Manchester-by-the-Sea town	Marblehead town
		Middleton town	Nahant town	Newbury town	Newburyport city
		Peabody city	Rockport town	Rowley town	Salem city
		Salisbury town	Saugus town	Swampscott town	Topsfield town
		Wenham town			
		MIDDLESEX COUNTY towns of	Acton town	Arlington town	Ashland town
		Ayer town	Bedford town	Belmont town	Boxborough town
		Burlington town	Cambridge city	Carlisle town	Concord town
		Everett city	Framingham town	Holliston town	Hopkinton town
		Hudson town	Lexington town	Lincoln town	Littleton town
		Malden city	Marlborough city	Maynard town	Medford city
		Melrose city	Natick town	Newton city	North Reading town
		Reading town	Sherborn town	Shirley town	Somerville city
		Stoneham town	Stow town	Sudbury town	Townsend town
		Wakefield town	Waltham city	Watertown city	Wayland town
		Weston town	Wilmington town	Winchester town	Woburn city
		NORFOLK COUNTY towns of	Bellingham town	Braintree town	Brookline town
		Canton town	Cohasset town	Dedham town	Dover town
		Foxborough town	Franklin city	Holbrook town	Medfield town
		Medway town	Millis town	Milton town	Needham town
		Norfolk town	Norwood town	Plainville town	Quincy city
		Randolph town	Sharon town	Stoughton town	Walpole town
		Wellesley town	Westwood town	Weymouth town	Wrentham town
		PLYMOUTH COUNTY towns of	Carver town	Duxbury town	Hanover town
		Hingham town	Hull town	Kingston town	Marshfield town
		Norwell town	Pembroke town	Plymouth town	Rockland town
		Scituate town	Wareham town		
		SUFFOLK COUNTY towns of	Boston city	Chelsea city	Revere city
		Winthrop town			
		WORCESTER COUNTY towns of	Berlin town	Blackstone town	Bolton town
		Harvard town	Hopedale town	Lancaster town	Mendon town
		Milford town	Millville town	Southborough town	Upton town
NH	Boston, MA-NH PMSA	ROCKINGHAM COUNTY towns of	Seabrook town	South Hampton town	

2004 IRC Section 42(d)(5)(C) Metropolitan Difficult Development Areas

State	Metropolitan Area Name	Metropolitan Area Components			
NJ	**Atlantic-Cape May, NJ PMSA**	Atlantic County	Cape May County		
	Jersey City, NJ PMSA	Hudson County			
	Vineland-Millville-Bridgeton, NJ PMSA	Cumberland County			
NY	**Dutchess County, NY PMSA**	Dutchess County			
	Nassau-Suffolk, NY PMSA	Nassau County	Suffolk County		
	New York, NY PMSA	Bronx County	Kings County	New York County	Putnam County
		Queens County	Richmond County	Rockland County	Westchester County
PR	**Aguadilla, PR MSA**	Aguada Municipio	Aguadilla Municipio	Moca Municipio	
	Caguas, PR PMSA	Caguas Municipio	Cayey Municipio	Cidra Municipio	Gurabo Municipio
		San Lorenzo Municipio			
	Mayaguez, PR MSA	Anasco Municipio	Cabo Rojo Municipio	Hormigueros Municipio	Mayaguez Municipio
		Sabana Grande Municipio	San German Municipio		
	San Juan-Bayamon, PR PMSA	Aguas Buenas Municipio	Barceloneta Municipio	Bayamon Municipio	Canovanas Municipio
		Carolina Municipio	Catano Municipio	Ceiba Municipio	Comerio Municipio
		Corozal Municipio	Dorado Municipio	Fajardo Municipio	Florida Municipio
		Guaynabo Municipio	Humacao Municipio	Juncos Municipio	Las Piedras Municipio
		Loiza Municipio	Luquillo Municipio	Manati Municipio	Morovis Municipio
		Naguabo Municipio	Naranjito Municipio	Rio Grande Municipio	San Juan Municipio
		Toa Alta Municipio	Toa Baja Municipio	Trujillo Alto Municipio	Vega Alta Municipio
		Vega Baja Municipio	Yabucoa Municipio		

2004 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

State	Nonmetropolitan Counties or County Equivalents			
AK	Bethel Census Area	Dillingham Census Area	Fairbanks North Star Borough	Haines Borough
	Juneau Borough	Ketchikan Gateway Borough	Kodiak Island Borough	Lake and Peninsula Borough
	Matanuska-Susitna Borough	Nome Census Area	North Slope Borough	Northwest Arctic Borough
	Sitka Borough	Valdez-Cordova Census Area	Wrangell-Petersburg Census Area	
AZ	Apache County	Cochise County	Gila County	Graham County
	La Paz County	Navajo County	Santa Cruz County	Yavapai County
AR	Baxter County			
CA	Amador County	Calaveras County	Colusa County	Del Norte County
	Glenn County	Humboldt County	Imperial County	Inyo County
	Kings County	Lake County	Lassen County	Mariposa County
	Mendocino County	Modoc County	Mono County	Nevada County
	San Benito County	Sierra County	Siskiyou County	Tehama County
	Trinity County	Tuolumne County		
CO	Archuleta County	Garfield County	La Plata County	Pitkin County
	San Miguel County	Summit County		
CT	LITCHFIELD COUNTY (part) towns of	Canaan town	Colebrook town	Cornwall town
	Goshen town	Kent town	Litchfield town	Morris town
	Norfolk town	North Canaan town	Salisbury town	Sharon town
	Thomaston town	Torrington town	Warren town	
	MIDDLESEX COUNTY (part) towns of	Chester town	Deep River town	Essex town
	Westbrook town			
DE	Sussex County			
FL	Calhoun County	Citrus County	Columbia County	DeSoto County
	Dixie County	Franklin County	Gilchrist County	Glades County
	Gulf County	Hamilton County	Hardee County	Hendry County
	Highlands County	Holmes County	Indian River County	Jackson County
	Jefferson County	Lafayette County	Levy County	Liberty County
	Madison County	Monroe County	Okeechobee County	Putnam County
	Sumter County	Suwannee County	Taylor County	Union County
	Walton County	Washington County		
HI	Hawaii County	Kauai County	Maui County	
ID	Bonner County	Kootenai County		
KY	Harlan County	Knox County	Laurel County	

2004 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

State	Nonmetropolitan Counties or County Equivalents			
ME	ANDROSCOGGIN COUNTY (part) towns of	Durham town	Leeds town	Livermore Falls town
	Livermore town	Minot town		
	Aroostook County			
	CUMBERLAND COUNTY (part) towns of	Baldwin town	Bridgton town	Brunswick town
	Harpswell town	Harrison town	Naples town	New Gloucester town
	Pownal town	Sebago town		
	Franklin County	Hancock County	Kennebec County	
	Knox County	Lincoln County	Oxford County	
	PENOBSCOT COUNTY (part) towns of	Alton town	Argyle unorg.	Bradford town
	Bradley town	Burlington town	Carmel town	Carroll plantation
	Charleston town	Chester town	Clifton town	Corinna town
	Corinth town	Dexter town	Dixmont town	Drew plantation
	East Central Penobscot unorg.	East Millinocket town	Edinburg town	Enfield town
	Etna town	Exeter town	Garland town	Greenbush town
	Greenfield town	Howland town	Hudson town	Kingman unorg.
	Lagrange town	Lakeville town	Lee town	Levant town
	Lincoln town	Lowell town	Mattawamkeag town	Maxfield town
	Medway town	Millinocket town	Mount Chase town	Newburgh town
	Newport town	North Penobscot unorg	Passadumkeag town	Patten town
	Plymouth town	Prentiss plantation	Seboeis plantation	Springfield town
	Stacyville town	Stetson town	Twombly unorg.	Webster plantation
	Whitney unorg.	Winn town	Woodville town	
	Piscataquis County	Sagadahoc County	Somerset County	
	WALDO COUNTY (part) towns of	Belfast city	Belmont town	Brooks town
	Burnham town	Frankfort town	Freedom town	Islesboro town
	Jackson town	Knox town	Liberty town	Lincolnville town
	Monroe town	Montville town	Morrill town	Northport town
	Palermo town	Prospect town	Searsmont town	Searsport town
	Stockton Springs town	Swanville town	Thorndike town	Troy town
	Unity town	Waldo town		
	Washington County			
	YORK COUNTY (part) towns of	Acton town	Alfred town	Arundel town
	Biddeford city	Cornish town	Dayton town	Kennebunk town
	Kennebunkport town	Lebanon town	Limerick town	Lyman town
	Newfield town	North Berwick town	Ogunquit town	Parsonsfield town
	Saco city	Sanford town	Shapleigh town	Waterboro town
	Wells town			

2004 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

State	Nonmetropolitan Counties or County Equivalents			
MA	BARNSTABLE COUNTY (part) towns of	Bourne town	Falmouth town	Provincetown town
	Truro town	Wellfleet town		
	Dukes County			
	FRANKLIN COUNTY (part) towns of	Ashfield town	Bernardston town	Buckland town
	Charlemont town	Colrain town	Conway town	Deerfield town
	Erving town	Gill town	Greenfield town	Hawley town
	Heath town	Leverett town	Leyden town	Monroe town
	Montague town	New Salem town	Northfield town	Orange town
	Rowe town	Shelburne town	Shutesbury town	Warwick town
	Wendell town	Whately town		
	HAMPDEN COUNTY (part) towns of	Blandford town	Brimfield town	Chester town
	Granville town	Tolland town	Wales town	
	HAMPSHIRE COUNTY (part) towns of	Chesterfield town	Cummington town	Goshen town
	Middlefield town	Pelham town	Plainfield town	Westhampton town
	Worthington town			
	Nantucket County			
	WORCESTER COUNTY (part) towns of	Athol town	Hardwick town	Hubbardston town
	New Braintree town	Petersham town	Phillipston town	Royalston town
	Warren town			
MN	Kanabec County			
MS	Bolivar County	Coahoma County	Issaquena County	Washington County
MT	Beaverhead County	Big Horn County	Blaine County	Broadwater County
	Carbon County	Carter County	Chouteau County	Custer County
	Daniels County	Dawson County	Deer Lodge County	Fallon County
	Fergus County	Flathead County	Gallatin County	Garfield County
	Glacier County	Golden Valley County	Granite County	Judith Basin County
	Lake County	Liberty County	Lincoln County	McCone County
	Madison County	Meagher County	Mineral County	Musselshell County
	Park County	Petroleum County	Phillips County	Pondera County
	Powder River County	Powell County	Prairie County	Ravalli County
	Richland County	Roosevelt County	Sanders County	Sheridan County
	Silver Bow County	Sweet Grass County	Teton County	Toole County
	Treasure County	Valley County	Wheatland County	Wibaux County
NV	Churchill County	Douglas County	Esmeralda County	Humboldt County
	Lincoln County	Lyon County	Mineral County	Pershing County
	White Pine County	Carson County		

2004 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

State	Nonmetropolitan Counties or County Equivalents			
NH	Belknap County	Carroll County	Cheshire County	Grafton County
	HILLSBOROUGH COUNTY (part) towns of	Antrim town	Bennington town	Deering town
	Francestown town	Greenfield town	Hancock town	Hillsborough town
	Lyndeborough town	New Boston town	Peterborough town	Sharon town
	Temple town	Windsor town		
	MERRIMACK COUNTY (part) towns of	Andover town	Boscawen town	Bow town
	Bradford town	Canterbury town	Chichester town	Concord city
	Danbury town	Dunbarton town	Epsom town	Franklin city
	Henniker town	Hill town	Hopkinton town	Loudon town
	New London town	Newbury town	Northfield town	Pembroke town
	Pittsfield town	Salisbury town	Sutton town	Warner town
	Webster town	Wilmot town		
	ROCKINGHAM COUNTY (part) towns of	Deerfield town	Northwood town	Nottingham town
	STRAFFORD COUNTY (part) towns of	Middleton town	New Durham town	Strafford town
NM	Catron County	Chaves County	Cibola County	Curry County
	DeBaca County	Grant County	Guadalupe County	Harding County
	Luna County	McKinley County	Mora County	Otero County
	Quay County	Rio Arriba County	Roosevelt County	San Miguel County
	Sierra County	Socorro County	Taos County	
NY	Clinton County	Columbia County	Cortland County	Essex County
	Greene County	Jefferson County	Sullivan County	Tompkins County
	Ulster County			
NC	Cleveland County	Jackson County	Pender County	Polk County
	Rutherford County	Watauga County		
OK	Payne County			
OR	Baker County	Clatsop County	Coos County	Crook County
	Curry County	Deschutes County	Douglas County	Grant County
	Harney County	Hood River County	Jefferson County	Josephine County
	Klamath County	Lake County	Lincoln County	Linn County
	Malheur County	Morrow County	Tillamook County	Union County
	Wallowa County	Wasco County	Wheeler County	
PA	Monroe County	Union County	Wayne County	
RI	NEWPORT COUNTY (part) towns of	Middletown town	Newport city	Portsmouth town
	WASHINGTON COUNTY (part) towns of	New Shoreham town		
SD	Butte County	Lawrence County	Meade County	
TX	Aransas County	Camp County	Kleberg County	Nacogdoches County
	Reagan County	Val Verde County	Yoakum County	
UT	Cache County	Daggett County	Iron County	Tooele County
	Washington County			

2004 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

State	Nonmetropolitan Counties or County Equivalents			
VT	Addison County	Bennington County	Caledonia County	
	FRANKLIN COUNTY (part) towns of	Bakersfield town	Berkshire town	Enosburg town
	Fairfield town	Fletcher town	Franklin town	Highgate town
	Montgomery town	Richford town	Sheldon town	
	GRAND ISLE COUNTY (part) towns of	Alburg town	Isle La Motte town	North Hero town
	Lamoille County	Orange County	Rutland County	
	Washington County	Windham County	Windsor County	
VA	Caroline County	Orange County	Westmoreland County	
WA	Clallam County	Mason County	San Juan County	Skagit County
PI	Pacific Islands			
PR	All Nonmetropolitan Puerto Rico			
VI	St. Croix	St. Johns/St. Thomas		

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2297/P.L. 108–183

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Making further continuing appropriations for the fiscal year 2004, and for other purposes. (Dec. 16, 2003; 117 Stat. 2684)

S. 811/P.L. 108–186

To support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance initiative under the HOME Investment Partnership Act, and for other purposes. (Dec. 16, 2003; 117 Stat. 2685)

S. 877/P.L. 108–187

Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (Dec. 16, 2003; 117 Stat. 2699)

H.J. Res. 63/P.L. 108–188

Compact of Free Association Amendments Act of 2003 (Dec. 17, 2003; 117 Stat. 2720)

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