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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 575

RIN 3206–AJ08

Recruitment and Relocation Bonuses and Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to provide agencies with greater flexibility to use recruitment and relocation bonuses and retention allowances. These regulations will allow agencies to pay recruitment and relocation bonuses and retention allowances to prevailing rate (wage) employees.

DATES: These final regulations will become effective on July 20, 2001.

FOR FURTHER INFORMATION CONTACT: Jeanne Jacobson, (202) 606–2858; FAX: (202) 606–0824; email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On January 19, 2001, the Office of Personnel Management (OPM) published proposed regulations to amend the recruitment and relocation bonus and retention allowance regulations in 5 CFR part 575, subparts A, B, and C, to provide agencies with additional flexibility to use these incentives (66 FR 5491). The proposed regulations would allow agencies to grant a retention allowance to a current employee likely to leave for other Federal employment under certain limited circumstances. The proposed regulations also would allow agencies to pay recruitment and relocation bonuses and retention allowances to an employee in a prevailing rate (wage) position, as defined in 5 U.S.C. 5342(a)(3).

These final regulations contain only those provisions from the proposed regulations that allow agencies to pay recruitment and relocation bonuses and retention allowances to prevailing rate (wage) employees. Comments received from Federal agencies strongly support the proposal to allow the payment of recruitment and relocation bonuses and retention allowances to wage employees. One agency asked that OPM issue the final regulations implementing this authority as quickly as possible so that it may use these incentives immediately to help address critical recruitment and retention problems. In response to these concerns, we are issuing final regulations to allow agencies to use recruitment, relocation, and retention payments immediately for prevailing rate (wage) positions.

We received many comments on our proposal to allow agencies to grant a retention allowance to a current employee likely to leave for other Federal employment under certain circumstances. The commenters raised various issues concerning the criteria for paying a retention allowance in these circumstances, and additional time is needed to consider these issues.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make these regulations effective in less than 30 days. In their comments to OPM, agencies expressed an urgent need to use the recruitment and relocation bonus and retention allowance authorities as soon as possible to help address serious problems in recruiting and retaining prevailing rate (wage) employees. Since use of the recruitment and relocation bonus and retention allowance authorities is discretionary, waiving the 30-day delay in the effective date of these regulations will not place an administrative burden on any Federal agency.

List of Subjects in 5 CFR Part 575

Government employees, Wages.

Office of Personnel Management

Steven R. Cohen,

Acting Director.

Accordingly, OPM is amending part 575 of title 5, Code of Federal Regulations, as follows:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

1. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

Subpart A—Recruitment Bonuses

2. In § 575.102, paragraph (a)(5) is amended by removing ''or''; paragraph (a)(6) is amended by removing ''.'' and inserting in its place ''; or''; and a new paragraph (a)(7) is added to read as follows:

§ 575.102 Delegation of authority.

(a) * * *

(7) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3).

* * * * *

Subpart B—Relocation Bonuses

3. In § 575.202, paragraph (a)(5) is amended by removing ''or''; paragraph (a)(6) is amended by removing ''.'' and inserting in its place ''; or''; and a new paragraph (a)(7) is added to read as follows:

§ 575.202 Delegation of authority.

(a) * * *

(7) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3).

* * * * *

Subpart C—Retention Allowances

4. In § 575.302, paragraph (a)(5) is amended by removing ''or''; paragraph (a)(6) is amended by removing ''.'' and inserting in its place ''; or''; and a new paragraph (a)(7) is added to read as follows:

§ 575.302 Delegation of authority.

(a) * * *

(7) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3).

* * * * *

[FR Doc. 01–18034 Filed 7–19–01; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–330–AD; Amendment 39–12336; AD 2001–15–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Powered By Pratt & Whitney JT9D–3 and –7 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure, and corrective actions, if necessary. The existing AD also provides for optional terminating action for the repetitive inspections and checks. This amendment requires certain new repetitive torque checks and the previously optional terminating action. The actions specified by this AD are intended to prevent loose fasteners and associated damage to the hanger fittings and bulkhead of the forward engine mount, which could result in separation of the engine from the airplane.

DATES: Effective August 24, 2001.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 6, 2000 (65 FR 69862, November 21, 2000).

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

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–23–16, amendment 39–11988 (65 FR 69862, November 21, 2000), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on February 15, 2001 (66 FR 10387). The action proposed to continue to require repetitive inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure, and corrective actions, if necessary. The action also proposed to mandate certain new repetitive torque checks and the previously optional terminating action.

Comments

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

Request to Eliminate Repetitive Inspections/Checks and Terminating Action

One commenter states that, if the initial torque check shows no loose fastener is installed, the repetitive inspections/checks and terminating action should not be required. The commenter's rationale for this request is that the cause of the loose fasteners is incorrect grip length of fasteners installed during a strut and wing modification.

The FAA infers that the commenter is stating that, if the fastener is not loose at the time of the initial inspection, it will not become loose later, and is requesting that we remove these requirements from this AD. The FAA does not concur. If the wrong grip-length of fastener is installed, damage of the fastener thread run-out may have occurred during initial installation of the fastener due to shanking of the fastener. This could lead to a problem with the durability of the fastener. No change to the final rule is necessary in this regard.

Reduce Torque Values for Loose Fastener Check

One commenter requests that the FAA revise the proposed rule to reduce the torque values for the loose fastener check to the minimum value. As an example, the commenter refers to the torque value of 250 inch-pounds for the NAS6706 fastener listed in Table 1 of Figure 3 of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000. The commenter states that this value should be 220 inch-pounds because that is the minimum installation torque required.

The FAA does not concur with the commenter's request. The difference in torque value to which the commenter refers is very small. If an operator determines that a fastener is NOT loose at a torque value of 220 inch-pounds but IS loose at a torque value of 250 inch-pounds, the operator may apply for an alternative method of compliance according to the provisions of paragraph (d) of this AD. No change to the final rule is necessary in this regard.

Clarify Instructions for Torque Check

One commenter requests that the FAA clarify how the torque check should be accomplished. The commenter specifically asks whether or not the fastener head should be retained if torque is applied to the nut end.

The FAA does not concur that any further clarification on this issue is necessary. The applicable service bulletin specifies that the torque check is intended to test whether the fastener rotates. The fastener head should not be retained because, if it is retained, it may be impossible to determine whether the fastener rotated before reaching the specified torque in Figure 3 of the service bulletin. No change to the final rule is necessary in this regard.

Explanation of Change to Alternative Method of Compliance (AMOC) Paragraph

Since the issuance of the proposed rule, the FAA has approved AMOCs for AD 2000–23–16. AMOCs approved previously in accordance with AD 2000–23–16 are considered acceptable for compliance with corresponding actions in this AD. Accordingly, a new paragraph (d)(2) has been added to this final rule.

Conclusion

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

Cost Impact

There are approximately 366 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA

estimates that 115 airplanes of U.S. registry will be affected by this AD.

The detailed visual inspections that are currently required by AD 2000–23–16 take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections currently required by the existing AD on U.S. operators is estimated to be $55,200, or $480 per airplane, per inspection.

The torque checks that are currently required by AD 2000–23–16 take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the torque checks currently required by the existing AD on U.S. operators is estimated to be $165,600, or $1,440 per airplane, per check.

The new torque checks required by this AD also will take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this torque check on U.S. operators is estimated to be $55,200, or $480 per airplane, per check.

The terminating action required by this AD will take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $300 per airplane. Based on these figures, the cost impact of the terminating action required by this AD on U.S. operators is estimated to be $200,100, or $1,740 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11988 (65 FR 80301, December 21, 2000), and by adding a new airworthiness directive (AD), amendment 39–12336, to read as follows:

2001–15–02 Boeing: Amendment 39–12336. Docket 2000–NM–330–AD. Supersedes AD 2000–23–16, Amendment 39–11988.

Applicability: Model 747 series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000; except Model 747 series airplanes having serial numbers 21048 and 20887.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loose fasteners and associated damage to the hanger fittings and strut forward bulkhead of the forward engine mount, which could result in separation of the engine from the airplane, accomplish the following:

Restatement of Requirements of AD 2000–23–16

Repetitive Inspections/Checks

(a) Within 60 days after December 6, 2000 (the effective date of AD 2000–23–16, amendment 39–11988): Perform a detailed visual inspection and torque check as specified in Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, to detect loose fasteners and associated damage to the hanger fittings and bulkhead of the forward engine mount, in accordance with Figure 1 of the alert service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no loose fastener or associated damage is detected, repeat the inspections/checks thereafter at the applicable intervals specified in Figure 1 of the alert service bulletin until accomplishment of the terminating action specified in paragraph (c) of this AD.

Note 3: Where there are differences between the AD and the alert service bulletin, the AD prevails.

Corrective Actions

(2) If any loose fastener or associated damage is detected, before further flight, perform the applicable corrective actions (torque check, rework or replacement of fittings), as specified in Figure 1 of the alert service bulletin. Repeat the inspections/checks thereafter at the applicable intervals specified in Figure 1 of the alert service bulletin until accomplishment of the terminating action specified in paragraph (c) of this AD. Where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain corrective actions (rework or replacement of fittings), this AD requires such rework and/or replacement to be done in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

New Requirements of this AD

Repetitive Checks/ Inspections/Corrective Actions

(b) Within 18 months after the effective date of this AD: Do the torque check specified in Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, to detect loose fasteners of the hanger fittings of the forward engine mount.

(1) If no loose fastener is detected, repeat the torque check thereafter at intervals not to exceed 1,200 flight cycles or 18 months, whichever occurs first, until accomplishment of the terminating action specified in paragraph (c) of this AD.

(2) If any loose fastener is detected, before further flight, perform the applicable corrective actions as specified in Figure 4, Figure 5, or Part 6, as applicable, of the Accomplishment Instructions of the alert service bulletin.

(i) If Figure 4 or Figure 5 of the Accomplishment Instructions of the alert service bulletin is used to do the corrective actions for the fitting; thereafter, repeat the detailed visual inspection required by paragraph (a) of this AD at the applicable intervals specified in Figure 1 of the alert service bulletin, and repeat the torque check for that fitting at intervals not to exceed 180 flight cycles. Accomplish the terminating action for that fitting as specified in Part 6 of the Accomplishment Instructions of the alert service bulletin within 18 months after finding any loose fastener or 60 months after the effective date of this AD, whichever occurs first.

(ii) If Part 6 of the Accomplishment Instructions of the alert service bulletin is used to do the corrective actions for the fitting, this constitutes terminating action for the repetitive inspections/checks for that fitting only.

(3) If any associated damage is found, before further flight, repair in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. If any damage to any fitting is found, before further flight, do the applicable corrective actions specified in Part 4 or Part 5 of the Accomplishment Instructions of the alert service bulletin; this constitutes terminating action for the repetitive inspections/checks for that fitting only.

(4) If any loose fastener is detected during any repeat inspection/check specified in paragraph (b)(2)(i) of this AD, before further flight, accomplish the terminating action for that fitting as specified in Part 6 of the Accomplishment Instructions of the alert service bulletin.

Terminating Action

(c) Within 60 months after the effective date of this AD: Accomplish all actions in the terminating action specified in Part 6 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000. Accomplishment of this paragraph constitutes terminating action for the repetitive inspections/checks required by paragraphs (a) and (b) of this AD. Where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain corrective actions (rework or replacement of fittings), this AD requires such rework and/or replacement to be done in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Note 4: Installation of two BACW10BP*APU washers on Group A fasteners accomplished during modification in accordance with Boeing Service Bulletin 747–54A2159, dated November 3, 1994, Revision 1, dated June 1, 1995, or Revision 2, dated March 14, 1996; and pin or bolt protrusion as specified in the 747 Structural Repair Manual, Chapter 51–30–02 (both referenced in Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000); is considered acceptable for compliance with the terminating action specified in paragraph (c) of this AD.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–23–16, amendment 39–11988, are approved as alternative methods of compliance for corresponding actions in this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (a)(2), (b)(3), and (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000. The incorporation by reference of that document was approved previously by the Director of the Federal Register as of December 6, 2000 (65 FR 69862, November 21, 2000). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on August 24, 2001.

Issued in Renton, Washington, on July 13, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18138 Filed 7–19–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8955]

RIN 1545–A075

Foreign Trusts That Have U.S. Beneficiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 679 of the Internal Revenue Code relating to transfers of property by U.S. persons to foreign trusts having one or more United States beneficiaries. The final regulations affect United States persons who transfer property to foreign trusts.

DATES: *Effective Date:* These regulations are effective July 20, 2001.

Applicability Date: For dates of applicability, see § 1.679–7.

FOR FURTHER INFORMATION CONTACT: Willard W. Yates at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2000, the IRS and Treasury published a notice of proposed rulemaking (REG–209038–89) in the **Federal Register** (65 FR 48185) inviting comments relating to the treatment of U.S. persons who transfer property to foreign trusts that have one or more U.S. beneficiaries. Comments responding to the notice of proposed rulemaking were received and a public hearing was held on November 8, 2000. After consideration of all of the comments, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Provisions

Comments Relating to § 1.679–2: Trusts Treated as Having a U.S. Beneficiary

A. Benefit to a U.S. Person

Under § 1.679–2(a)(1) of the proposed regulations, a foreign trust that has received property from a U.S. transferor is treated as having a U.S. beneficiary unless during the taxable year of the U.S. transferor both of the following tests are satisfied: (i) No part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, either directly or indirectly, a U.S. person; and (ii) if the trust is terminated at any time during the taxable year, no part of the income or corpus of the trust could be paid to or for the benefit of, either directly or indirectly, a U.S. person.

Section 1.679–2(a)(2)(i) of the proposed regulations provides that, for purposes of applying these tests, income or corpus is considered to be paid or accumulated to or for the benefit of a U.S. person during a taxable year of the U.S. transferor if during that year, directly or indirectly, income may be distributed to, or accumulated for the benefit of a U.S. person, or corpus may be distributed to, or held for the future benefit of, a U.S. person. This determination is made without regard to whether income or corpus is actually distributed to a U.S. person during that year, and without regard to whether a U.S. person's interest in the trust income or corpus is contingent on a future event. The proposed regulations provide a narrow exception with respect to certain contingent beneficiaries whose interests in the trust are so remote as to be negligible.

One commenter suggests that § 1.679–2(a)(2) of the proposed regulations (specifically, *Example 5* of § 1.679–2(a)(2)(iii)) is overly broad. The commenter suggests that a foreign trust should not be treated as having a U.S. beneficiary where the trust's only asset consists of stock of a foreign corporation, the trust will terminate one year after the death of a U.S. transferor, whereupon distributions of corpus or income may be made to a U.S. person, and the trust receives no income from the corporation during the term of its existence. The commenter argues that because the foreign trust receives no income from the foreign corporation during the trust's existence, the U.S. person's status as a beneficiary provides the U.S. person with nothing of value and, therefore, the foreign trust should not be treated as having a U.S. beneficiary.

The commenter's argument overlooks the clear legislative intent underlying section 679 that a foreign trust will be treated as having a U.S. beneficiary even in situations where there exists only the possibility of distribution of income or corpus to or the accumulation of corpus for the benefit of a U.S. person. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 210 (1975). The fact that a foreign trust holds an asset, such as the stock of a foreign corporation, that produces no income during the term of the trust's existence is of no import for purposes of determining whether the trust will be treated as having a U.S. beneficiary. The determining factor in such a situation is that the trust holds corpus for the future benefit of a U.S. person, regardless of whether the corpus consists of stock with respect to which no dividends have been paid or some other asset that produces no current income. Accordingly, the final regulations adopt the rule of the proposed regulations.

B. Records and Documents

Section 1.679–2(a)(4) of the proposed regulations provides that a trust may be treated as having a U.S. beneficiary by reference, inter alia, to written and oral agreements and understandings not contained in the trust document, and to whether the terms of the trust instrument are actually or reasonably expected to be disregarded by the parties to the trust. A commenter states that this rule creates new and unclear rules for purposes of determining whether an arrangement constitutes a trust for Federal income tax purposes.

The determination as to whether an arrangement will be treated as a trust is made pursuant to the rules set forth in § 301.7701–4 of the regulations. The regulations under section 679 address only the determination of whether a foreign trust will be treated as having a U.S. beneficiary. The final regulations are not intended to provide factors in addition to the rules of § 301.7701–4 for purposes of determining whether an arrangement constitutes a trust for Federal income tax purposes.

C. Trusts Acquiring a U.S. Beneficiary

The proposed regulations anticipate situations where the beneficiary of a foreign trust may change. Section 1.679–2(c)(1) of the proposed regulations provides that if a foreign trust is not treated as having a U.S. beneficiary (within the meaning of § 1.679–2(a)) but subsequently is treated as having a U.S. beneficiary, the U.S. transferor is treated as having additional income in the first taxable year of the U.S. transferor in which the trust is treated as having a U.S. beneficiary. The amount of the additional income is equal to the trust's undistributed net income, as defined in section 665(a), at the end of the U.S. transferor's immediately preceding taxable year and is subject to the rules of section 668, providing for an interest charge on accumulation distributions from foreign trusts.

A commenter suggests that the rule treating the U.S. transferor as having additional income in the first year the foreign trust acquires the U.S. beneficiary exceeds the authority of section 679, noting that in most cases the transferor will not have received any income from the trust.

Section 1.679–2(c)(1) of the proposed regulations follows closely the legislative history underlying section 679 regarding the U.S. transferor's recognition of additional income. The legislative history provides that the amount of the additional income shall be the foreign trust's undistributed net income, i.e., accumulated income that would be taxable to a beneficiary upon distribution, as of the close of the immediately preceding taxable year. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 211, Fn. 13 (1975). In short, the legislative history provides that the U.S. transferor's additional income shall receive the same treatment as accumulation distributions to beneficiaries of a foreign trust. Accumulated income distributions to beneficiaries of foreign trusts are subject to the interest charge provided for in section 668. Accordingly, the provision for additional income in § 1.679–2(c)(1) of the final regulations, as well as the application of the interest charge provided for in section 668, are necessary to carry out the legislative purpose of section 679. The rule of the proposed regulations is adopted by the final regulations without change.

Comments Relating to § 1.679–3: Transfers

A. Indirect Transfers—Principal Purpose of Tax Avoidance

Section 1.679–3(a) of the proposed regulations broadly defines the term *transfer* as any direct, indirect, or constructive transfer by a U.S. person to a foreign trust. Section 1.679–3(c) of the proposed regulations provides rules for determining when there is an indirect transfer. Under § 1.679–3(c)(1) of the proposed regulations, a transfer to a foreign trust by any person to whom a U.S. person transfers property (referred to as an intermediary) is treated as an indirect transfer by a U.S. person if the transfer is made pursuant to a plan one of the principal purposes of which is the avoidance of U.S. tax. Section 1.679–

3(c)(2) of the proposed regulations deems a transfer to have been made pursuant to such a plan if certain conditions are present.

The deemed-principal-purpose test of § 1.679–3(c)(2) of the proposed regulations is similar to the deemed-principal-purpose test in § 1.643(h)–1(a) of the regulations, which concerns distributions from foreign trusts to U.S. persons through intermediaries, except that the presumption in the proposed regulations applies without regard to the period of time between the transfer from the U.S. person to the intermediary and from the intermediary to the foreign trust. In contrast, the deemed-principal-purpose test of § 1.643(h)–1(a)(2)(ii) applies only if property is distributed to the U.S. person during the period beginning 24 months before and ending 24 months after the intermediary's receipt of property from the foreign trust. A commenter suggests that a similar time limit should be provided in § 1.679–3(c)(2) with respect to outbound transfers.

In the context of section 643(h), Treasury and the IRS weighed the potential for abuse in that area against the possible adverse effect that the deemed-principal-purpose test could have on legitimate transactions, and concluded that a time limitation in § 1.643(h)–1(a)(2) was appropriate. However, Treasury and the IRS believe the potential for abuse is greater in the case of outbound transfers to foreign trusts than in the case of inbound trust distributions to U.S. beneficiaries. Congress enacted section 679 in order to prevent the tax-free accumulation of income earned by foreign trusts over long periods of time that provided foreign trusts with an unwarranted advantage over domestic trusts. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 207 (1975). Providing for a time limitation to the application of § 1.679–3(c) could allow for easy circumvention of Congress' purpose in enacting section 679. Treasury and the IRS recognize that some transfers that were not intended to avoid U.S. tax may come within the presumption in the absence of a specific time limit. However, under such circumstances § 1.679–3(c)(2)(ii) provides taxpayers with a way to rebut the application of the deemed-principal-purpose test. Therefore, the final regulations do not include a time limitation to the application of § 1.679–3(c)(2)(i).

B. Indirect Transfers—Corporate Distributions

One commenter asked about the application of the indirect transfer rules set forth in § 1.679–3(c) of the proposed regulations to successive corporate distributions up a chain of wholly-owned corporations to an ultimate shareholder that is a foreign trust. The commenter expressed concern that, if one of the lower-tier corporations were a domestic corporation, § 1.679–3(c) of the proposed regulations could potentially treat the distributions as an indirect transfer from the domestic corporation to the foreign trust that would be subject to the general rule of § 1.679–1.

Even if the distributions were characterized as an indirect transfer from a domestic corporation to a foreign trust under § 1.679–3(c), the indirect transfer would generally be treated as a transfer for fair market value under the final sentence of § 1.679–4(b)(1) and would therefore be excepted from the general rule of § 1.679–1 pursuant to § 1.679–4(a)(4). Therefore, no special rules have been added to the final regulations to address this situation.

C. Transfers to Entities Owned by Foreign Trusts

Section 1.679–3(f) of the proposed regulations provides specific rules regarding transfers by a U.S. person to an entity owned by a foreign trust if the U.S. person is related to the foreign trust. The transfer is treated as a transfer from the U.S. person to the foreign trust, followed by a transfer from the foreign trust to the entity owned by the foreign trust, unless the U.S. person demonstrates to the satisfaction of the Commissioner that the transfer to the entity is properly attributable to the U.S. person's ownership interest in the entity. A commenter noted potential conflicts with this rule and judicial doctrines concerning constructive corporate distributions.

Section 1.679–3(f) is not intended to override judicial doctrines concerning constructive corporate distributions. For example, if judicial doctrines would recharacterize a direct transfer of property by a domestic corporation to an entity owned by a foreign trust as a constructive dividend of the property to the domestic corporation's shareholder followed by a constructive transfer of the property by that shareholder to the foreign trust and a constructive contribution by the foreign trust to the entity owned by the foreign trust, then those judicial doctrines would apply (and § 1.679–3(f) would not apply) to the transaction.

Comments Relating to § 1.679–4: Exceptions to General Rule—Transfers to Trusts Described in Section 501(c)(3)

Section 1.679–4(a)(3) of the proposed regulations provides an exception to the general rule of § 1.679–1 for transfers to a foreign trust that has already received a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3), provided that the letter has been neither revoked nor modified. Commenters questioned the requirement that a foreign trust obtain a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3). They assert that the requirement may interfere with a U.S. person's ability to make contributions to a foreign charitable entity that may not be familiar with U.S. tax laws and may not have any reason to obtain a determination letter from the IRS. They suggest that the final regulations require only that the U.S. transferor disclose to the IRS, at such time and in such manner as the IRS may provide, that the transfer has been made and that the transferor believes the transferee is an organization described in section 501(c)(3).

In response to commenters' concerns, the final regulations eliminate the requirement that the foreign trust receive a ruling or determination letter from the IRS recognizing the trust's tax-exempt status under section 501(c)(3). The final regulations provide instead that the general rule of § 1.679–1 does not apply to any transfer of property to a foreign trust that is described in section 501(c)(3). However, taxpayers should be aware that, under Notice 97–34 (1997–1 C.B. 422), the U.S. transferor has a reporting obligation on Form 3520 with respect to such a transfer, unless the foreign trust has received a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3). Moreover, if the IRS subsequently determines that the foreign trust is not described in section 501(c)(3), the exception will not apply for any taxable year of the U.S. transferor, and the U.S. transferor may be subject to interest and penalties, if applicable.

Clarification Regarding Section 958

The final regulations clarify the language of § 1.958–1(b) of the proposed regulations with respect to persons who are treated as owners under sections 671 through 679 of any portion of a foreign trust that includes the stock of a foreign corporation.

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 and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these final regulations is Willard W. Yates of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.679–1 also issued under 26 U.S.C. 643(a)(7) and 679(d).

Section 1.679–2 also issued under 26 U.S.C. 643(a)(7) and679(d).,

Section 1.679–3 also issued under 26 U.S.C. 643(a)(7) and 679(d).

Section 1.679–4 also issued under 26 U.S.C. 643(a)(7), 679(a)(3) and 679(d).

Section 1.679–5 also issued under 26 U.S.C. 643(a)(7) and 679(d).

Section 1.679–6 also issued under 26 U.S.C. 643(a)(7) and 679(d).

* * *

Par. 2. Sections 1.679–0, 1.679–1, 1.679–2, 1.679–3, 1.679–4, 1.679–5, 1.679–6, and 1.679–7 are added under the undesignated center heading ''Grantors and Others Treated as Substantial Owners'' to read as follows:

§ 1.679–0 Outline of major topics.

This section lists the major paragraphs contained in §§ 1.679–1 through 1.679–7 as follows:

§ 1.679–1 U.S. transferor treated as owner of foreign trust.

(a) In general.
(b) Interaction with sections 673 through 678.
(c) Definitions.
(1) U.S. transferor.
(2) U.S. person.
(3) Foreign trust.
(4) Property.
(5) Related person.
(6) Obligation.
(d) Examples.

§ 1.679–2 Trusts treated as having a U.S. beneficiary.

(a) Existence of U.S. beneficiary.
(1) In general.
(2) Benefit to a U.S. person
(i) In general.
(ii) Certain unexpected beneficiaries.
(iii) Examples.
(3) Changes in beneficiary's status.
(i) In general.
(ii) Examples.
(4) General rules.
(i) Records and documents.
(ii) Additional factors.
(iii) Examples.
(b) Indirect U.S. beneficiaries.
(1) Certain foreign entities.
(2) Other indirect beneficiaries.
(3) Examples.
(c) Treatment of U.S. transferor upon foreign trust's acquisition or loss of U.S. beneficiary.
(1) Trusts acquiring a U.S. beneficiary.
(2) Trusts ceasing to have a U.S. beneficiary.
(3) Examples.

§ 1.679–3 Transfers.

(a) In general.
(b) Transfers by certain trusts.
(1) In general.
(2) Example.
(c) Indirect transfers.
(1) Principal purpose of tax avoidance.
(2) Principal purpose of tax avoidance deemed to exist.
(3) Effect of disregarding intermediary.
(i) In general.
(ii) Special rule.
(iii) Effect on intermediary.
(4) Related parties.
(5) Examples.
(d) Constructive transfers.
(1) In general.
(2) Examples.
(e) Guarantee of trust obligations.
(1) In general.
(2) Amount transferred.
(3) Principal repayments.
(4) Guarantee.
(5) Examples.
(f) Transfers to entities owned by a foreign trust.
(1) General rule.
(2) Examples.

§ 1.679–4 Exceptions to general rule.

(a) In general.
(b) Transfers for fair market value.
(1) In general.
(2) Special rule.
(i) Transfers for partial consideration.
(ii) Example.
(c) Certain obligations not taken into account.
(d) Qualified obligations.
(1) In general.
(2) Additional loans.
(3) Obligations that cease to be qualified.
(4) Transfers resulting from failed qualified obligations.
(5) Renegotiated loans.
(6) Principal repayments.
(7) Examples.

§ 1.679–5 Pre-immigration trusts.

(a) In general.
(b) Special rules.
(1) Change in grantor trust status.
(2) Treatment of undistributed income.
(c) Examples.

§ 1.679–6 Outbound migrations of domestic trusts.

(a) In general.
(b) Amount deemed transferred.
(c) Example.

§ 1.679–7 Effective dates.

(a) In general.
(b) Special rules.

§ 1.679–1 U.S. transferor treated as owner of foreign trust.

(a) *In general.* A U.S. transferor who transfers property to a foreign trust is treated as the owner of the portion of the trust attributable to the property transferred if there is a U.S. beneficiary of any portion of the trust, unless an exception in § 1.679–4 applies to the transfer.

(b) *Interaction with sections 673 through 678.* The rules of this section apply without regard to whether the U.S. transferor retains any power or interest described in sections 673 through 677. If a U.S. transferor would be treated as the owner of a portion of a foreign trust pursuant to the rules of this section and another person would be treated as the owner of the same portion of the trust pursuant to section 678, then the U.S. transferor is treated as the owner and the other person is not treated as the owner.

(c) *Definitions.* The following definitions apply for purposes of this section and §§ 1.679–2 through 1.679–7:

(1) *U.S. transferor.* The term *U.S. transferor* means any U.S. person who makes a transfer (as defined in § 1.679–3) of property to a foreign trust.

(2) *U.S. person.* The term *U.S. person* means a United States person as defined in section 7701(a)(30), a nonresident alien individual who elects under section 6013(g) to be treated as a resident of the United States, and an individual who is a dual resident taxpayer within the meaning of § 301.7701(b)–7(a) of this chapter.

(3) *Foreign trust.* Section 7701(a)(31)(B) defines the term *foreign*

trust. See also § 301.7701–7 of this chapter.

(4) *Property.* The term *property* means any property including cash.

(5) *Related person.* A person is a *related person* if, without regard to the transfer at issue, the person is—

(i) A grantor of any portion of the trust (within the meaning of § 1.671–2(e)(1));

(ii) An owner of any portion of the trust under sections 671 through 679;

(iii) A beneficiary of the trust; or

(iv) A person who is related (within the meaning of section 643(i)(2)(B)) to any grantor, owner or beneficiary of the trust.

(6) *Obligation.* The term *obligation* means any bond, note, debenture, certificate, bill receivable, account receivable, note receivable, open account, or other evidence of indebtedness, and, to the extent not previously described, any annuity contract.

(d) *Examples.* The following examples illustrate the rules of paragraph (a) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s father, who is a resident alien, *D* is *A*'s uncle, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Interaction with section 678. A creates and funds *FT*. *FT* may provide for the education of *B* by paying for books, tuition, room and board. In addition, *C* has the power to vest the trust corpus or income in himself within the meaning of section 678(a)(1). Under paragraph (b) of this section, *A* is treated as the owner of the portion of *FT* attributable to the property transferred to *FT* by *A* and *C* is not treated as the owner thereof.

Example 2. U.S. person treated as owner of a portion of FT. D creates and funds *FT* for the benefit of *B*. *D* retains a power described in section 676 and § 1.672(f)–3(a)(1). *A* transfers property to *FT*. Under sections 676 and 672(f), *D* is treated as the owner of the portion of *FT* attributable to the property transferred by *D*. Under paragraph (a) of this section, *A* is treated as the owner of the portion of *FT* attributable to the property transferred by *A*.

§ 1.679–2 Trusts treated as having a U.S. beneficiary.

(a) *Existence of U.S. beneficiary*—(1) *In general.* The determination of whether a foreign trust has a U.S. beneficiary is made on an annual basis. A foreign trust is treated as having a U.S. beneficiary unless during the taxable year of the U.S. transferor—

(i) No part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, directly or indirectly, a U.S. person; and

(ii) If the trust is terminated at any time during the taxable year, no part of the income or corpus of the trust could be paid to or for the benefit of, directly or indirectly, a U.S. person.

(2) *Benefit to a U.S. person*—(i) *In general.* For purposes of paragraph (a)(1) of this section, income or corpus may be paid or accumulated to or for the benefit of a U.S. person during a taxable year of the U.S. transferor if during that year, directly or indirectly, income may be distributed to, or accumulated for the benefit of, a U.S. person, or corpus may be distributed to, or held for the future benefit of, a U.S. person. This determination is made without regard to whether income or corpus is actually distributed to a U.S. person during that year, and without regard to whether a U.S. person's interest in the trust income or corpus is contingent on a future event.

(ii) *Certain unexpected beneficiaries.* Notwithstanding paragraph (a)(2)(i) of this section, for purposes of paragraph (a)(1) of this section, a person who is not named as a beneficiary and is not a member of a class of beneficiaries as defined under the trust instrument is not taken into consideration if the U.S. transferor demonstrates to the satisfaction of the Commissioner that the person's contingent interest in the trust is so remote as to be negligible. The preceding sentence does not apply with respect to persons to whom distributions could be made pursuant to a grant of discretion to the trustee or any other person. A class of beneficiaries generally does not include heirs who will benefit from the trust under the laws of intestate succession in the event that the named beneficiaries (or members of the named class) have all deceased (whether or not stated as a named class in the trust instrument).

(iii) *Examples.* The following examples illustrate the rules of paragraphs (a)(1) and (2) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Distribution of income to U.S. person. A transfers property to *FT*. The trust instrument provides that all trust income is to be distributed currently to *B*. Under paragraph (a)(1) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Income accumulation for the benefit of a U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that from 2001 through 2010, the trustee of *FT* may distribute trust income to *C* or may accumulate the trust income. The trust instrument further provides that in 2011, the trust will terminate and the trustee may distribute the trust assets to either or both of *B* and *C*, in the trustee's discretion. If the trust terminates unexpectedly prior to 2011, all trust assets must be distributed to *C*. Because it is possible that income may be accumulated in each year, and that the accumulated income ultimately may be distributed to *B*, a U.S. person, under paragraph (a)(1) of this section *FT* is treated as having a U.S. beneficiary during each of *A*'s tax years from 2001 through 2011. This result applies even though no U.S. person may receive distributions from the trust during the tax years 2001 through 2010.

Example 3. Corpus held for the benefit of a U.S. person. The facts are the same as in Example 2, except that from 2001 through 2011, all trust income must be distributed to *C*. In 2011, the trust will terminate and the trustee may distribute the trust corpus to either or both of *B* and *C*, in the trustee's discretion. If the trust terminates unexpectedly prior to 2011, all trust corpus must be distributed to *C*. Because during each of *A*'s tax years from 2001 through 2011 trust corpus is held for possible future distribution to *B*, a U.S. person, under paragraph (a)(1) of this section *FT* is treated as having a U.S. beneficiary during each of those years. This result applies even though no U.S. person may receive distributions from the trust during the tax years 2001 through 2010.

Example 4. Distribution upon U.S. transferor's death. A transfers property to *FT*. The trust instrument provides that all trust income must be distributed currently to *C* and, upon *A*'s death, the trust will terminate and the trustee may distribute the trust corpus to either or both of *B* and *C*. Because *B* may receive a distribution of corpus upon the termination of *FT*, and *FT* could terminate in any year, *FT* is treated as having a U.S. beneficiary in the year of the transfer and in subsequent years.

Example 5. Distribution after U.S. transferor's death. The facts are the same as in *Example 4,* except the trust instrument provides that the trust will not terminate until the year following *A*'s death. Upon termination, the trustee may distribute the trust assets to either or both of *B* and *C*, in the trustee's discretion. All trust assets are invested in the stock of *X*, a foreign corporation, and *X* makes no distributions to *FT*. Although no U.S. person may receive a distribution until the year after *A*'s death, and *FT* has no realized income during any year of its existence, during each year in which *A* is living corpus may be held for future distribution to *B*, a U.S. person. Thus, under paragraph (a)(1) of this section *FT* is treated as having a U.S. beneficiary during each of *A*'s tax years from 2001 through the year of *A*'s death.

Example 6. Constructive benefit to U.S. person. A transfers property to *FT*. The trust instrument provides that no income or corpus may be paid directly to a U.S. person. However, the trust instrument provides that trust corpus may be used to satisfy *B*'s legal obligations to a third party by making a payment directly to the third party. Under paragraphs (a)(1) and (2) of this section, *FT* is treated as having a U.S. beneficiary.

Example 7. U.S. person with negligible contingent interest. A transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *C*, and upon *C*'s death, all corpus is to be

distributed to whomever of *C*'s three children is then living. All of *C*'s children are nonresident aliens. Under the laws of intestate succession that would apply to *FT*, if all of *C*'s children are deceased at the time of *C*'s death, the corpus would be distributed to *A*'s heirs. *A*'s living relatives at the time of the transfer consist solely of two brothers and two nieces, all of whom are nonresident aliens, and two first cousins, one of whom, *E*, is a U.S. citizen. Although it is possible under certain circumstances that *E* could receive a corpus distribution under the applicable laws of intestate succession, for each year the trust is in existence *A* is able to demonstrate to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that *E*'s contingent interest in *FT* is so remote as to be negligible. Provided that paragraph (a)(4) of this section does not require a different result, *FT* is not treated as having a U.S. beneficiary.

Example 8. U.S. person with non-negligible contingent interest. A transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *D*, *A*'s uncle, who is a nonresident alien, and upon *A*'s death, the corpus is to be distributed to *D* if he is then living. Under the laws of intestate succession that would apply to *FT*, *B* and *C* would share equally in the trust corpus if *D* is not living at the time of *A*'s death. *A* is unable to demonstrate to the satisfaction of the Commissioner that *B*'s contingent interest in the trust is so remote as to be negligible. Under paragraph (a)(2)(ii) of this section, *FT* is treated as having a U.S. beneficiary as of the year of the transfer.

Example 9. U.S. person as member of class of beneficiaries. A transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *D*, *A*'s uncle, who is a nonresident alien, and upon *A*'s death, the corpus is to be distributed to *D* if he is then living. If *D* is not then living, the corpus is to be distributed to *D*'s descendants. *D*'s grandson, *E*, is a resident alien. Under paragraph (a)(2)(ii) of this section, *FT* is treated as having a U.S. beneficiary as of the year of the transfer.

Example 10. Trustee's discretion in choosing beneficiaries. A transfers property to *FT*. The trust instrument provides that the trustee may distribute income and corpus to, or accumulate income for the benefit of, any person who is pursuing the academic study of ancient Greek, in the trustee's discretion. Because it is possible that a U.S. person will receive distributions of income or corpus, or will have income accumulated for his benefit, *FT* is treated as having a U.S. beneficiary. This result applies even if, during a tax year, no distributions or accumulations are actually made to or for the benefit of a U.S. person. *A* may not invoke paragraph (a)(2)(ii) of this section because a U.S. person could benefit pursuant to a grant of discretion in the trust instrument.

Example 11. Appointment of remainder beneficiary. A transfers property to *FT*. The trust instrument provides that the trustee may distribute current income to *C*, or may accumulate income, and, upon termination of the trust, trust assets are to be distributed to *C*. However, the trust instrument further provides that *D*, *A*'s uncle, may appoint a different remainder beneficiary. Because it is possible that a U.S. person could be named as the remainder beneficiary, and because corpus could be held in each year for the future benefit of that U.S. person, *FT* is treated as having a U.S. beneficiary for each year.

Example 12. Trust not treated as having a U.S. beneficiary. A transfers property to *FT*. The trust instrument provides that the trustee may distribute income and corpus to, or accumulate income for the benefit of *C*. Upon termination of the trust, all income and corpus must be distributed to *C*. Assume that paragraph (a)(4) of this section is not applicable under the facts and circumstances and that *A* establishes to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that no U.S. persons are reasonably expected to benefit from the trust. Because no part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, either directly or indirectly, a U.S. person, and if the trust is terminated no part of the income or corpus of the trust could be paid to or for the benefit of, either directly or indirectly, a U.S. person, *FT* is not treated as having a U.S. beneficiary.

Example 13. U.S. beneficiary becomes non-U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that, as long as *B* remains a U.S. resident, no distributions of income or corpus may be made from the trust to *B*. The trust instrument further provides that if *B* becomes a nonresident alien, distributions of income (including previously accumulated income) and corpus may be made to him. If *B* remains a U.S. resident at the time of *FT*'s termination, all accumulated income and corpus is to be distributed to *C*. In 2007, *B* becomes a nonresident alien and remains so thereafter. Because income may be accumulated during the years 2001 through 2007 for the benefit of a person who is a U.S. person during those years, *FT* is treated as having a U.S. beneficiary under paragraph (a)(1) of this section during each of those years. This result applies even though *B* cannot receive distributions from *FT* during the years he is a resident alien and even though *B* might remain a resident alien who is not entitled to any distribution from *FT*. Provided that paragraph (a)(4) of this section does not require a different result and that *A* establishes to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that no other U.S. persons are reasonably expected to benefit from the trust, *FT* is not treated as having a U.S. beneficiary under paragraph (a)(1) of this section during tax years after 2007.

(3) *Changes in beneficiary's status*—(i) *In general.* For purposes of paragraph (a)(1) of this section, the possibility that a person that is not a U.S. person could become a U.S. person will not cause that person to be treated as a U.S. person for purposes of paragraph (a)(1) of this section until the tax year of the U.S. transferor in which that individual actually becomes a U.S. person. However, if a person who is not a U.S. person becomes a U.S. person for the first time more than 5 years after the date of a transfer to the foreign trust by a U.S. transferor, that person is not treated as a U.S. person for purposes of applying paragraph (a)(1) of this section with respect to that transfer.

(ii) *Examples.* The following examples illustrate the rules of paragraph (a)(3) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Non-U.S. beneficiary becomes U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *C* and that, upon the termination of *FT*, all corpus is to be distributed to *C*. Assume that paragraph (a)(4) of this section is not applicable under the facts and circumstances and that A establishes to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that no U.S. persons are reasonably expected to benefit from the trust. Under paragraph (a)(3)(i) of this section, *FT* is not treated as having a U.S. beneficiary during the tax years of *A* in which *C* remains a nonresident alien. If *C* first becomes a resident alien in 2004, *FT* is treated as having a U.S. beneficiary commencing in that year under paragraph (a)(3) of this section. See paragraph (c) of this section regarding the treatment of *A* upon *FT*'s acquisition of a U.S. beneficiary.

Example 2. Non-U.S. beneficiary becomes U.S. person more than 5 years after transfer. The facts are the same as in *Example 1*, except *C* first becomes a resident alien in 2007. *FT* is treated as not having a U.S. beneficiary under paragraph (a)(3)(i) of this section with respect to the property transfer by *A*. However, if *C* had previously been a U.S. person during any prior period, the 5-year exception in paragraph (a)(3)(i) of this section would not apply in 2007 because it would not have been the first time *C* became a U.S. person.

(4) *General rules*—(i) *Records and documents.* Even if, based on the terms of the trust instrument, a foreign trust is not treated as having a U.S. beneficiary within the meaning of paragraph (a)(1) of this section, the trust may nevertheless be treated as having a U.S. beneficiary pursuant to paragraph (a)(1) of this section based on the following—

(A) All written and oral agreements and understandings relating to the trust;

(B) Memoranda or letters of wishes;

(C) All records that relate to the actual distribution of income and corpus; and

(D) All other documents that relate to the trust, whether or not of any purported legal effect.

(ii) *Additional factors.* For purposes of determining whether a foreign trust is treated as having a U.S. beneficiary within the meaning of paragraph (a)(1) of this section, the following additional factors are taken into account—

(A) If the terms of the trust instrument allow the trust to be amended to benefit a U.S. person, all potential benefits that could be provided to a U.S. person pursuant to an amendment must be taken into account;

(B) If the terms of the trust instrument do not allow the trust to be amended to benefit a U.S. person, but the law applicable to a foreign trust may require payments or accumulations of income or corpus to or for the benefit of a U.S. person (by judicial reformation or otherwise), all potential benefits that could be provided to a U.S. person pursuant to the law must be taken into account, unless the U.S. transferor demonstrates to the satisfaction of the Commissioner that the law is not reasonably expected to be applied or invoked under the facts and circumstances; and

(C) If the parties to the trust ignore the terms of the trust instrument, or if it is reasonably expected that they will do so, all benefits that have been, or are reasonably expected to be, provided to a U.S. person must be taken into account.

(iii) *Examples.* The following examples illustrate the rules of paragraph (a)(4) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Amendment pursuant to local law. A creates and funds *FT* for the benefit of *C*. The terms of *FT* (which, according to the trust instrument, cannot be amended) provide that no part of the income or corpus of *FT* may be paid or accumulated during the taxable year to or for the benefit of any U.S. person, either during the existence of *FT* or at the time of its termination. However, pursuant to the applicable foreign law, FT can be amended to provide for additional beneficiaries, and there is an oral understanding between *A* and the trustee that *B* can be added as a beneficiary. Under paragraphs (a)(1) and (a)(4)(ii)(B) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Actions in violation of the terms of the trust. A transfers property to *FT*. The trust instrument provides that no U.S. person can receive income or corpus from *FT* during the term of the trust or at the termination of *FT*. Notwithstanding the terms of the trust instrument, a letter of wishes directs the trustee of *FT* to provide for the educational needs of *B*, who is about to begin college. The letter of wishes contains a disclaimer to the effect that its contents are only suggestions and recommendations and that the trustee is at all times bound by the terms of the trust as set forth in the trust instrument. Under paragraphs (a)(1) and (a)(4)(ii)(C) of this section, *FT* is treated as having a U.S. beneficiary.

(b) *Indirect U.S. beneficiaries*—(1) *Certain foreign entities.* For purposes of paragraph (a)(1) of this section, an amount is treated as paid or accumulated to or for the benefit of a U.S. person if the amount is paid to or accumulated for the benefit of—

(i) A controlled foreign corporation, as defined in section 957(a);

(ii) A foreign partnership, if a U.S. person is a partner of such partnership; or

(iii) A foreign trust or estate, if such trust or estate has a U.S. beneficiary (within the meaning of paragraph (a)(1) of this section).

(2) *Other indirect beneficiaries.* For purposes of paragraph (a)(1) of this section, an amount is treated as paid or accumulated to or for the benefit of a U.S. person if the amount is paid to or accumulated for the benefit of a U.S. person through an intermediary, such as an agent or nominee, or by any other means where a U.S. person may obtain an actual or constructive benefit.

(3) *Examples.* The following examples illustrate the rules of this paragraph (b). Unless otherwise noted, A is a resident alien. B is A's son and is a resident alien. FT is a foreign trust. The examples are as follows:

Example 1. Trust benefitting foreign corporation. A transfers property to *FT*. The beneficiary of *FT* is *FC*, a foreign corporation. *FC* has outstanding solely 100 shares of common stock. *B* owns 49 shares of the *FC* stock and *FC2*, also a foreign corporation, owns the remaining 51 shares. *FC2* has outstanding solely 100 shares of common stock. *B* owns 49 shares of *FC2* and nonresident alien individuals own the remaining 51 *FC2* shares. *FC* is a controlled foreign corporation (as defined in section 957(a), after the application of section 958(a)(2)). Under paragraphs (a)(1) and (b)(1)(i) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Trust benefitting another trust. A transfers property to *FT*. The terms of *FT* permit current distributions of income to *B*. *A* transfers property to another foreign trust, *FT2*. The terms of *FT2* provide that no U.S. person can benefit either as to income or corpus, but permit current distributions of income to *FT*. Under paragraph (a)(1) of this section, *FT* is treated as having a U.S. beneficiary and, under paragraphs (a)(1) and (b)(1)(iii) of this section, *FT2* is treated as having a U.S. beneficiary.

Example 3. Trust benefitting another trust after transferor's death. A transfers property to *FT*. The terms of *FT* require that all income from *FT* be accumulated during *A*'s lifetime. In the year following *A*'s death, a share of *FT* is to be distributed to *FT2*, another foreign trust, for the benefit of *B*. Under paragraphs (a)(1) and (b)(1)(iii) of this section, *FT* is treated as having a U.S. beneficiary beginning with the year of *A*'s transfer of property to *FT*.

Example 4. Indirect benefit through use of debit card. A transfers property to FT. The trust instrument provides that no U.S. person can benefit either as to income or corpus. However, *FT* maintains an account with *FB*, a foreign bank, and *FB* issues a debit card to *B* against the account maintained by *FT* and *B* is allowed to make withdrawals. Under paragraphs (a)(1) and (b)(2) of this section, *FT* is treated as having a U.S. beneficiary.

Example 5. Other indirect benefit. A transfers property to *FT*. *FT* is administered by *FTC*, a foreign trust company. *FTC* forms *IBC*, an international business corporation formed under the laws of a foreign jurisdiction. *IBC* is the beneficiary of *FT*. *IBC* maintains an account with *FB*, a foreign bank. *FB* issues a debit card to *B* against the account maintained by *IBC* and *B* is allowed to make withdrawals. Under paragraphs (a)(1) and (b)(2) of this section, *FT* is treated as having a U.S. beneficiary.

(c) *Treatment of U.S. transferor upon foreign trust's acquisition or loss of U.S. beneficiary*—(1) *Trusts acquiring a U.S. beneficiary.* If a foreign trust to which a U.S. transferor has transferred property is not treated as having a U.S. beneficiary (within the meaning of paragraph (a) of this section) for any taxable year of the U.S. transferor, but the trust is treated as having a U.S. beneficiary (within the meaning of paragraph (a) of this section) in any subsequent taxable year, the U.S. transferor is treated as having additional income in the first such taxable year of the U.S. transferor in which the trust is treated as having a U.S. beneficiary. The amount of the additional income is equal to the trust's undistributed net income, as defined in section 665(a), at the end of the U.S. transferor's immediately preceding taxable year and is subject to the rules of section 668, providing for an interest charge on accumulation distributions from foreign trusts.

(2) *Trusts ceasing to have a U.S. beneficiary.* If, for any taxable year of a U.S. transferor, a foreign trust that has received a transfer of property from the U.S. transferor ceases to be treated as having a U.S. beneficiary, the U.S. transferor ceases to be treated as the owner of the portion of the trust attributable to the transfer beginning in the first taxable year following the last taxable year of the U.S. transferor during which the trust was treated as having a U.S. beneficiary (unless the U.S. transferor is treated as an owner thereof pursuant to sections 673 through 677). The U.S. transferor is treated as making a transfer of property to the foreign trust on the first day of the first taxable year following the last taxable year of the U.S. transferor during which the trust was treated as having a U.S. beneficiary. The amount of the property deemed to be transferred to the trust is the portion of the trust attributable to the prior

transfer to which paragraph (a)(1) of this section applied. For rules regarding the recognition of gain on transfers to foreign trusts, see section 684.

(3) *Examples.* The rules of this paragraph (c) are illustrated by the following examples. *A* is a resident alien, *B* is *A's* son, and *FT* is a foreign trust. The examples are as follows:

Example 1. Trust acquiring U.S. beneficiary. (i) In 2001, *A* transfers stock with a fair market value of $100,000 to *FT.* The stock has an adjusted basis of $50,000 at the time of the transfer. The trust instrument provides that income may be paid currently to, or accumulated for the benefit of, *B* and that, upon the termination of the trust, all income and corpus is to be distributed to *B.* At the time of the transfer, *B* is a nonresident alien. *A* is not treated as the owner of any portion of FT under sections 673 through 677. *FT* accumulates a total of $30,000 of income during the taxable years 2001 through 2003. In 2004, *B* moves to the United States and becomes a resident alien. Assume paragraph (a)(4) of this section is not applicable under the facts and circumstances.

(ii) Under paragraph (c)(1) of this section, *A* is treated as receiving an accumulation distribution in the amount of $30,000 in 2004 and immediately transferring that amount back to the trust. The accumulation distribution is subject to the rules of section 668, providing for an interest charge on accumulation distributions.

(iii) Under paragraphs (a)(1) and (3) of this section, beginning in 2005, *A* is treated as the owner of the portion of *FT* attributable to the stock transferred by *A* to *FT* in 2001 (which includes the portion attributable to the accumulated income deemed to be retransferred in 2004).

Example 2. Trust ceasing to have U.S. beneficiary. (i) The facts are the same as in *Example 1.* In 2008, B becomes a nonresident alien. On the date B becomes a nonresident alien, the stock transferred by A to *FT* in 2001 has a fair market value of $125,000 and an adjusted basis of $50,000.

(ii) Under paragraph (c)(2) of this section, beginning in 2009, *FT* is not treated as having a U.S. beneficiary, and *A* is not treated as the owner of the portion of the trust attributable to the prior transfer of stock. For rules regarding the recognition of gain on the termination of ownership status, see section 684.

§ 1.679–3 Transfers.

(a) *In general.* A transfer means a direct, indirect, or constructive transfer.

(b) *Transfers by certain trusts*—(1) *In general.* If any portion of a trust is treated as owned by a U.S. person, a transfer of property from that portion of the trust to a foreign trust is treated as a transfer from the owner of that portion to the foreign trust.

(2) *Example.* The following example illustrates this paragraph (b):

Example. In 2001, *A*, a U.S. citizen, creates and funds *DT*, a domestic trust. *A* has the power to revest absolutely in himself the title to the property in *DT* and is treated as the owner of *DT* pursuant to section 676. In 2004, *DT* transfers property to *FT*, a foreign trust. *A* is treated as having transferred the property to *FT* in 2004 for purposes of this section.

(c) *Indirect transfers*—(1) *Principal purpose of tax avoidance.* A transfer to a foreign trust by any person (intermediary) to whom a U.S. person transfers property is treated as an indirect transfer by a U.S. person to the foreign trust if such transfer is made pursuant to a plan one of the principal purposes of which is the avoidance of United States tax.

(2) *Principal purpose of tax avoidance deemed to exist.* For purposes of paragraph (c)(1) of this section, a transfer is deemed to have been made pursuant to a plan one of the principal purposes of which was the avoidance of United States tax if—

(i) The U.S. person is related (within the meaning of paragraph (c)(4) of this section) to a beneficiary of the foreign trust, or has another relationship with a beneficiary of the foreign trust that establishes a reasonable basis for concluding that the U.S. transferor would make a transfer to the foreign trust; and

(ii) The U.S. person cannot demonstrate to the satisfaction of the Commissioner that—

(A) The intermediary has a relationship with a beneficiary of the foreign trust that establishes a reasonable basis for concluding that the intermediary would make a transfer to the foreign trust;

(B) The intermediary acted independently of the U.S. person;

(C) The intermediary is not an agent of the U.S. person under generally applicable United States agency principles; and

(D) The intermediary timely complied with the reporting requirements of section 6048, if applicable.

(3) *Effect of disregarding intermediary*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, if a transfer is treated as an indirect transfer pursuant to paragraph (c)(1) of this section, then the intermediary is treated as an agent of the U.S. person, and the property is treated as transferred to the foreign trust by the U.S. person in the year the property is transferred, or made available, by the intermediary to the foreign trust. The fair market value of the property transferred is determined as of the date of the transfer by the intermediary to the foreign trust.

(ii) *Special rule.* If the Commissioner determines, or if the taxpayer can demonstrate to the satisfaction of the Commissioner, that the intermediary is an agent of the foreign trust under generally applicable United States agency principles, the property will be treated as transferred to the foreign trust in the year the U.S. person transfers the property to the intermediary. The fair market value of the property transferred will be determined as of the date of the transfer by the U.S. person to the intermediary.

(iii) *Effect on intermediary.* If a transfer of property is treated as an indirect transfer under paragraph (c)(1) of this section, the intermediary is not treated as having transferred the property to the foreign trust.

(4) *Related parties.* For purposes of this paragraph (c), a U.S. transferor is treated as related to a U.S. beneficiary of a foreign trust if the U.S. transferor and the beneficiary are related for purposes of section 643(i)(2)(B), with the following modifications—

(i) For purposes of applying section 267 (other than section 267(f)) and section 707(b)(1), ''at least 10 percent'' is used instead of ''more than 50 percent'' each place it appears; and

(ii) The principles of section 267(b)(10), using ''at least 10 percent'' instead of ''more than 50 percent,'' apply to determine whether two corporations are related.

(5) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. Principal purpose of tax avoidance. A, a U.S. citizen, creates and funds *FT*, a foreign trust, for the benefit of *A*'s children, who are U.S. citizens. In 2004, *A* decides to transfer an additional 1000X to the foreign trust. Pursuant to a plan with a principal purpose of avoiding the application of section 679, A transfers 1000X to *I*, a foreign person. *I* subsequently transfers 1000X to *FT*. Under paragraph (c)(1) of this section, *A* is treated as having made a transfer of 1000X to *FT*.

Example 2. U.S. person unable to demonstrate that intermediary acted independently. A, a U.S. citizen, creates and funds *FT*, a foreign trust, for the benefit of *A*'s children, who are U.S. citizens. On July 1, 2004, *A* transfers XYZ stock to *D*, *A*'s uncle, who is a nonresident alien. *D* immediately sells the XYZ stock and uses the proceeds to purchase ABC stock. On January 1, 2007, *D* transfers the ABC stock to *FT*. *A* is unable to demonstrate to the satisfaction of the Commissioner, pursuant to paragraph (c)(2) of this section, that *D* acted independently of *A* in making the transfer to *FT*. Under paragraph (c)(1) of this section, *A* is treated as having transferred the ABC stock to FT. Under paragraph (c)(3) of this section, *D* is treated as an agent of *A*, and the transfer is deemed to have been made on January 1, 2007.

Example 3. Indirect loan to foreign trust. A, a U.S. citizen, previously created and funded *FT*, a foreign trust, for the benefit of

A's children, who are U.S. citizens. On July 1, 2004, *A* deposits 500X with *FB*, a foreign bank. On January 1, 2005, *FB* loans 450X to *FT*. *A* is unable to demonstrate to the satisfaction of the Commissioner, pursuant to paragraph (c)(2) of this section, that *FB* has a relationship with *FT* that establishes a reasonable basis for concluding that *FB* would make a loan to *FT* or that *FB* acted independently of *A* in making the loan. Under paragraph (c)(1) of this section, *A* is deemed to have transferred 450X directly to *FT* on January 1, 2005. Under paragraph (c)(3) of this section, *FB* is treated as an agent of *A*. For possible exceptions with respect to qualified obligations of the trust, and the treatment of principal repayments with respect to obligations of the trust that are not qualified obligations, see § 1.679–4.

Example 4. Loan to foreign trust prior to deposit of funds in foreign bank. The facts are the same as in *Example 3*, except that *A* makes the 500X deposit with *FB* on January 2, 2005, the day after *FB* makes the loan to *FT*. The result is the same as in *Example 3*.

(d) *Constructive transfers*—(1) *In general.* For purposes of paragraph (a) of this section, a constructive transfer includes any assumption or satisfaction of a foreign trust's obligation to a third party.

(2) *Examples.* The rules of this paragraph (d) are illustrated by the following examples. In each example, *A* is a U.S. citizen and *FT* is a foreign trust. The examples are as follows:

Example 1. Payment of debt of foreign trust. FT owes 1000X to *Y*, an unrelated foreign corporation, for the performance of services by *Y* for *FT*. In satisfaction of *FT*'s liability to *Y*, *A* transfers to *Y* property with a fair market value of 1000X. Under paragraph (d)(1) of this section, *A* is treated as having made a constructive transfer of the property to *FT*.

Example 2. Assumption of liability of foreign trust. FT owes 1000X to *Y*, an unrelated foreign corporation, for the performance of services by *Y* for *FT*. *A* assumes *FT*'s liability to pay *Y*. Under paragraph (d)(1) of this section, *A* is treated as having made a constructive transfer of property with a fair market value of 1000X to *FT*.

(e) *Guarantee of trust obligations*—(1) *In general.* If a foreign trust borrows money or other property from any person who is not a related person (within the meaning of § 1.679–1(c)(5)) with respect to the trust (lender) and a U.S. person (U.S. guarantor) that is a related person with respect to the trust guarantees (within the meaning of paragraph (e)(4) of this section) the foreign trust's obligation, the U.S. guarantor is treated for purposes of this section as a U.S. transferor that has made a transfer to the trust on the date of the guarantee in an amount determined under paragraph (e)(2) of this section. To the extent this paragraph causes the U.S. guarantor to be treated as having made a transfer to the trust, a lender that is a U.S. person shall not be treated as having transferred that amount to the foreign trust.

(2) *Amount transferred.* The amount deemed transferred by a U.S. guarantor described in paragraph (e)(1) of this section is the guaranteed portion of the adjusted issue price of the obligation (within the meaning of § 1.1275–1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273–1(c)).

(3) *Principal repayments.* If a U.S. person is treated under this paragraph (e) as having made a transfer by reason of the guarantee of an obligation, payments of principal to the lender by the foreign trust with respect to the obligation are taken into account on and after the date of the payment in determining the portion of the trust attributable to the property deemed transferred by the U.S. guarantor.

(4) *Guarantee.* For purposes of this section, the term guarantee—

(i) Includes any arrangement under which a person, directly or indirectly, assures, on a conditional or unconditional basis, the payment of another's obligation;

(ii) Encompasses any form of credit support, and includes a commitment to make a capital contribution to the debtor or otherwise maintain its financial viability; and

(iii) Includes an arrangement reflected in a comfort letter, regardless of whether the arrangement gives rise to a legally enforceable obligation. If an arrangement is contingent upon the occurrence of an event, in determining whether the arrangement is a guarantee, it is assumed that the event has occurred.

(5) *Examples.* The rules of this paragraph (e) are illustrated by the following examples. In all of the examples, A is a U.S. resident and FT is a foreign trust. The examples are as follows:

Example 1. Foreign lender. X, a foreign corporation, loans 1000X of cash to *FT* in exchange for *FT*'s obligation to repay the loan. *A* guarantees the repayment of 600X of *FT*'s obligation. Under paragraph (e)(2) of this section, *A* is treated as having transferred 600X to *FT*.

Example 2. Unrelated U.S. lender. The facts are the same as in *Example 1*, except *X* is a U.S. person that is not a related person within the meaning of § 1.679–1(c)(5). The result is the same as in *Example 1*.

(f) *Transfers to entities owned by a foreign trust*—(1) *General rule.* If a U.S. person is a related person (as defined in § 1.679–1(c)(5)) with respect to a foreign trust, any transfer of property by the U.S. person to an entity in which the foreign trust holds an ownership interest is treated as a transfer of such property by the U.S. person to the foreign trust followed by a transfer of the property from the foreign trust to the entity owned by the foreign trust, unless the U.S. person demonstrates to the satisfaction of the Commissioner that the transfer to the entity is properly attributable to the U.S. person's ownership interest in the entity.

(2) *Examples.* The rules of this paragraph (f) are illustrated by the following examples. In all of the examples, *A* is a U.S. citizen, *FT* is a foreign trust, and *FC* is a foreign corporation. The examples are as follows:

Example 1. Transfer treated as transfer to trust. A creates and funds *FT*, which is treated as having a U.S. beneficiary under § 1.679–2. *FT* owns all of the outstanding stock of *FC*. *A* transfers property directly to *FC*. Because *FT* is the sole shareholder of *FC*, *A* is unable to demonstrate to the satisfaction of the Commissioner that the transfer is properly attributable to *A*'s ownership interest in *FC*. Accordingly, under this paragraph (f), *A* is treated as having transferred the property to *FT*, followed by a transfer of such property by *FT* to *FC*. Under § 1.679–1(a), *A* is treated as the owner of the portion of *FT* attributable to the property treated as transferred directly to *FT*. Under § 1.367(a)–1T(c)(4)(ii), the transfer of property by *FT* to *FC* is treated as a transfer of the property by *A* to *FC*.

Example 2. Transfer treated as transfer to trust. The facts are the same as in *Example 1*, except that *FT* is not treated as having a U.S. beneficiary under § 1.679–2. Under this paragraph (f), *A* is treated as having transferred the property to *FT*, followed by a transfer of such property by *FT* to *FC*. *A* is not treated as the owner of *FT* for purposes of § 1.679–1(a). For rules regarding the recognition of gain on the transfer, see section 684.

Example 3. Transfer not treated as transfer to trust. A creates and funds *FT*. *FC* has outstanding solely 100 shares of common stock. *FT* owns 50 shares of *FC* stock, and *A* owns the remaining 50 shares. On July 1, 2001, *FT* and *A* each transfer 1000X to *FC*. *A* is able to demonstrate to the satisfaction of the Commissioner that *A*'s transfer to *FC* is properly attributable to *A*'s ownership interest in *FC*. Accordingly, under this paragraph (f), *A*'s transfer to *FC* is not treated as a transfer to *FT*.

§ 1.679–4 Exceptions to general rule.

(a) *In general.* Section 1.679–1 does not apply to—

(1) Any transfer of property to a foreign trust by reason of the death of the transferor;

(2) Any transfer of property to a foreign trust described in sections 402(b), 404(a)(4), or 404A;

(3) Any transfer of property to a foreign trust described in section 501(c)(3) (without regard to the requirements of section 508(a)); and

(4) Any transfer of property to a foreign trust to the extent the transfer is for fair market value.

(b) *Transfers for fair market value*—(1) *In general.* For purposes of this section, a transfer is for fair market value only to the extent of the value of property received from the trust, services rendered by the trust, or the right to use property of the trust. For example, rents, royalties, interest, and compensation paid to a trust are transfers for fair market value only to the extent that the payments reflect an arm's length price for the use of the property of, or for the services rendered by, the trust. For purposes of this determination, an interest in the trust is not property received from the trust. For purposes of this section, a distribution to a trust with respect to an interest held by such trust in an entity other than a trust or an interest in certain investment trusts described in § 301.7701–4(c) of this chapter, liquidating trusts described in § 301.7701–4(d) of this chapter, or environmental remediation trusts described in § 301.7701–4(e) of this chapter is considered to be a transfer for fair market value.

(2) *Special rule*—(i) *Transfers for partial consideration.* For purposes of this section, if a person transfers property to a foreign trust in exchange for property having a fair market value that is less than the fair market value of the property transferred, the exception in paragraph (a)(4) of this section applies only to the extent of the fair market value of the property received.

(ii) *Example.* This paragraph (b) is illustrated by the following example:

Example. A, a U.S. citizen, transfers property that has a fair market value of 1000X to *FT*, a foreign trust, in exchange for 600X of cash. Under this paragraph (b), § 1.679–1 applies with respect to the transfer of 400X (1000X less 600X) to *FT*.

(c) *Certain obligations not taken into account.* Solely for purposes of this section, in determining whether a transfer by a U.S. transferor that is a related person (as defined in § 1.679–1(c)(5)) with respect to the foreign trust is for fair market value, any obligation (as defined in § 1.679–1(c)(6)) of the trust or a related person (as defined in § 1.679–1(c)(5)) that is not a qualified obligation within the meaning of paragraph (d)(1) of this section shall not be taken into account.

(d) *Qualified obligations*—(1) *In general.* For purposes of this section, an obligation is treated as a qualified obligation only if—

(i) The obligation is reduced to writing by an express written agreement;

(ii) The term of the obligation does not exceed five years (for purposes of determining the term of an obligation, the obligation's maturity date is the last possible date that the obligation can be outstanding under the terms of the obligation);

(iii) All payments on the obligation are denominated in U.S. dollars;

(iv) The yield to maturity is not less than 100 percent of the applicable Federal rate and not greater that 130 percent of the applicable Federal rate (the applicable Federal rate for an obligation is the applicable Federal rate in effect under section 1274(d) for the day on which the obligation is issued, as published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter));

(v) The U.S. transferor extends the period for assessment of any income or transfer tax attributable to the transfer and any consequential income tax changes for each year that the obligation is outstanding, to a date not earlier than three years after the maturity date of the obligation (this extension is not necessary if the maturity date of the obligation does not extend beyond the end of the U.S. transferor's taxable year for the year of the transfer and is paid within such period); when properly executed and filed, such an agreement is deemed to be consented to for purposes of § 301.6501(c)–1(d) of this chapter; and

(vi) The U.S. transferor reports the status of the loan, including principal and interest payments, on Form 3520 for every year that the loan is outstanding.

(2) *Additional loans.* If, while the original obligation is outstanding, the U.S. transferor or a person related to the trust (within the meaning of § 1.679–1(c)(5)) directly or indirectly obtains another obligation issued by the trust, or if the U.S. transferor directly or indirectly obtains another obligation issued by a person related to the trust, the original obligation is deemed to have the maturity date of any such subsequent obligation in determining whether the term of the original obligation exceeds the specified 5-year term. In addition, a series of obligations issued and repaid by the trust (or a person related to the trust) is treated as a single obligation if the transactions giving rise to the obligations are structured with a principal purpose to avoid the application of this provision.

(3) *Obligations that cease to be qualified.* If an obligation treated as a qualified obligation subsequently fails to be a qualified obligation (e.g., renegotiation of the terms of the obligation causes the term of the obligation to exceed five years), the U.S. transferor is treated as making a transfer to the trust in an amount equal to the original obligation's adjusted issue price (within the meaning of § 1.1275–1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273–1(c)) as of the date of the subsequent event that causes the obligation to no longer be a qualified obligation. If the maturity date is extended beyond five years by reason of the issuance of a subsequent obligation by the trust (or person related to the trust), the amount of the transfer will not exceed the issue price of the subsequent obligation. The subsequent obligation is separately tested to determine if it is a qualified obligation.

(4) *Transfers resulting from failed qualified obligations.* In general, a transfer resulting from a failed qualified obligation is deemed to occur on the date of the subsequent event that causes the obligation to no longer be a qualified obligation. However, based on all of the facts and circumstances, the Commissioner may deem a transfer to have occurred on any date on or after the issue date of the original obligation. For example, if at the time the original obligation was issued, the transferor knew or had reason to know that the obligation would not be repaid, the Commissioner could deem the transfer to have occurred on the issue date of the original obligation.

(5) *Renegotiated loans.* Any loan that is renegotiated, extended, or revised is treated as a new loan, and any transfer of funds to a foreign trust after such renegotiation, extension, or revision under a pre-existing loan agreement is treated as a transfer subject to this section.

(6) *Principal repayments.* The payment of principal with respect to any obligation that is not treated as a qualified obligation under this paragraph is taken into account on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

(7) *Examples.* The rules of this paragraph (d) are illustrated by the following examples. In the examples, *A* and *B* are U.S. residents and *FT* is a foreign trust. The examples are as follows:

Example 1. Demand loan. A transfers 500X to *FT* in exchange for a demand note that permits *A* to require repayment by *FT* at any time. *A* is a related person (as defined in § 1.679–1(c)(5)) with respect to *FT.* Because *FT's* obligation to *A* could remain outstanding for more than five years, the obligation is not a qualified obligation within the meaning of paragraph (d) of this section and, pursuant to paragraph (c) of this section, it is not taken into account for purposes of

determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, § 1.679–1 applies with respect to the full 500X transfer to *FT.*

Example 2. Private annuity. A transfers 4000X to *FT* in exchange for an annuity from the foreign trust that will pay *A* 100X per year for the rest of *A*'s life. *A* is a related person (as defined in § 1.679–1(c)(5)) with respect to *FT.* Because *FT*'s obligation to *A* could remain outstanding for more than five years, the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section and, pursuant to paragraph (c) of this section, it is not taken into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, § 1.679–1 applies with respect to the full 4000X transfer to *FT.*

Example 3. Loan to unrelated foreign trust. B transfers 1000X to *FT* in exchange for an obligation of the trust. The term of the obligation is fifteen years. *B* is not a related person (as defined in § 1.679–1(c)(5)) with respect to *FT.* Because *B* is not a related person, the fair market value of the obligation received by *B* is taken into account for purposes of determining whether *B*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section, even though the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section.

Example 4. Transfer for an obligation with term in excess of 5 years. A transfers property that has a fair market value of 5000X to *FT* in exchange for an obligation of the trust. The term of the obligation is ten years. *A* is a related person (as defined in § 1.679–1(c)(5)) with respect to *FT.* Because the term of the obligation is greater than five years, the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section and, pursuant to paragraph (c) of this section, it is not taken into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, § 1.679–1 applies with respect to the full 5000X transfer to *FT.*

Example 5. Transfer for a qualified obligation. The facts are the same as in *Example 4,* except that the term of the obligation is 3 years. Assuming the other requirements of paragraph (d)(1) of this section are satisfied, the obligation is a qualified obligation and its adjusted issue price is taken into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section.

Example 6. Effect of subsequent obligation on original obligation. A transfers property that has a fair market value of 1000X to *FT* in exchange for an obligation that satisfies the requirements of paragraph (d)(1) of this section. *A* is a related person (as defined in § 1.679–1(c)(5)) with respect to *FT.* Two years later, *A* transfers an additional 2000X to *FT* and receives another obligation from *FT* that has a maturity date four years from the date that the second obligation was issued. Under paragraph (d)(2) of this section, the original obligation is deemed to have the maturity date of the second obligation. Under paragraph (a) of this section, *A* is treated as having made a transfer in an amount equal to the original obligation's adjusted issue price (within the meaning of § 1.1275–1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273–1(c)) as of the date of issuance of the second obligation. The second obligation is tested separately to determine whether it is a qualified obligation for purposes of applying paragraph (a) of this section to the second transfer.

§ 1.679–5 Pre-immigration trusts.

(a) *In general.* If a nonresident alien individual becomes a U.S. person and the individual has a residency starting date (as determined under section 7701(b)(2)(A)) within 5 years after directly or indirectly transferring property to a foreign trust (the original transfer), the individual is treated as having transferred to the trust on the residency starting date an amount equal to the portion of the trust attributable to the property transferred by the individual in the original transfer.

(b) *Special rules*—(1) *Change in grantor trust status.* For purposes of paragraph (a) of this section, if a nonresident alien individual who is treated as owning any portion of a trust under the provisions of subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, subsequently ceases to be so treated, the individual is treated as having made the original transfer to the foreign trust immediately before the trust ceases to be treated as owned by the individual.

(2) *Treatment of undistributed income.* For purposes of paragraph (a) of this section, the property deemed transferred to the foreign trust on the residency starting date includes undistributed net income, as defined in section 665(a), attributable to the property deemed transferred. Undistributed net income for periods before the individual's residency starting date is taken into account only for purposes of determining the amount of the property deemed transferred.

(c) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. Nonresident alien becomes resident alien. On January 1, 2002, *A*, a nonresident alien individual, transfers property to a foreign trust, *FT.* On January 1, 2006, *A* becomes a resident of the United States within the meaning of section 7701(b)(1)(A) and has a residency starting date of January 1, 2006, within the meaning of section 7701(b)(2)(A). Under paragraph (a) of this section, *A* is treated as a U.S. transferor and is deemed to transfer the property to *FT* on January 1, 2006. Under paragraph (b)(2) of this section, the property deemed transferred to *FT* on January 1, 2006, includes the undistributed net income of the trust, as defined in section 665(a), attributable to the property originally transferred.

Example 2. Nonresident alien loses power to revest property. On January 1, 2002, *A,* a nonresident alien individual, transfers property to a foreign trust, *FT. A* has the power to revest absolutely in himself the title to such property transferred and is treated as the owner of the trust pursuant to sections 676 and 672(f). On January 1, 2008, the terms of *FT* are amended to remove *A*'s power to revest in himself title to the property transferred, and *A* ceases to be treated as the owner of *FT.* On January 1, 2010, *A* becomes a resident of the United States. Under paragraph (b)(1) of this section, for purposes of paragraph (a) of this section *A* is treated as having originally transferred the property to *FT* on January 1, 2008. Because this date is within five years of *A*'s residency starting date, *A* is deemed to have made a transfer to the foreign trust on January 1, 2010, his residency starting date. Under paragraph (b)(2) of this section, the property deemed transferred to the foreign trust on January 1, 2010, includes the undistributed net income of the trust, as defined in section 665(a), attributable to the property deemed transferred.

§ 1.679–6 Outbound migrations of domestic trusts.

(a) *In general.* Subject to the provisions of paragraph (b) of this section, if an individual who is a U.S. person transfers property to a trust that is not a foreign trust, and such trust becomes a foreign trust while the U.S. person is alive, the U.S. individual is treated as a U.S. transferor and is deemed to transfer the property to a foreign trust on the date the domestic trust becomes a foreign trust.

(b) *Amount deemed transferred.* For purposes of paragraph (a) of this section, the property deemed transferred to the trust when it becomes a foreign trust includes undistributed net income, as defined in section 665(a), attributable to the property previously transferred. Undistributed net income for periods prior to the migration is taken into account only for purposes of determining the portion of the trust that is attributable to the property transferred by the U.S. person.

(c) *Example.* The following example illustrates the rules of this section. For purposes of the example, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, and *DT* is a domestic trust. The example is as follows:

Example. Outbound migration of domestic trust. On January 1, 2002, *A* transfers property to *DT,* for the benefit of *B.* On January 1, 2003, *DT* acquires a foreign trustee who has the power to determine whether and when distributions will be made to *B.* Under section 7701(a)(30)(E) and § 301.7701–7(d)(ii)(A) of this chapter, *DT* becomes a

foreign trust on January 1, 2003. Under paragraph (a) of this section, *A* is treated as transferring property to a foreign trust on January 1, 2003. Under paragraph (b) of this section, the property deemed transferred to the trust when it becomes a foreign trust includes undistributed net income, as defined in section 665(a), attributable to the property deemed transferred.

§ 1.679–7 Effective dates.

(a) *In general.* Except as provided in paragraph (b) of this section, the rules of §§ 1.679–1, 1.679–2, 1.679–3, and 1.679–4 apply with respect to transfers after August 7, 2000.

(b) *Special rules.* (1) The rules of § 1.679–4(c) and (d) apply to an obligation issued after February 6, 1995, whether or not in accordance with a pre-existing arrangement or understanding. For purposes of the rules of § 1.679–4(c) and (d), if an obligation issued on or before February 6, 1995, is modified after that date, and the modification is a significant modification within the meaning of § 1.1001–3, the obligation is treated as if it were issued on the date of the modification. However, the penalty provided in section 6677 applies only to a failure to report transfers in exchange for obligations issued after August 20, 1996.

(2) The rules of § 1.679–5 apply to persons whose residency starting date is after August 7, 2000.

(3) The rules of § 1.679–6 apply to trusts that become foreign trusts after August 7, 2000.

Par. 3. In § 1.958–1, the first sentence of paragraph (b) is revised to read as follows:

§ 1.958–1 Direct and indirect ownership of stock.

* * * * *

(b) * * * For purposes of paragraph (a)(2) of this section, stock owned, directly or indirectly, by or for a foreign corporation, foreign partnership, foreign trust (within the meaning of section 7701(a)(31)) described in sections 671 through 679, or other foreign trust or foreign estate (within the meaning of section 7701(a)(31)) shall be considered as being owned proportionately by its shareholders, partners, grantors or other persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock, or beneficiaries, respectively. * * *

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§ 1.958–2 [Amended]

Par. 4. In § 1.958–2, paragraph (c)(1)(ii)(*b*) is amended by removing the language ''678'' and adding ''679'' in its place.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 9, 2001.

Mark Weinberger,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8956]

RIN 1545–AY25

Recognition of Gain on Certain Transfers to Certain Foreign Trusts and Estates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 684 of the Internal Revenue Code relating to recognition of gain on certain transfers to certain foreign trusts and estates. The regulations affect United States persons who transfer property to foreign trusts and estates.

DATES: *Effective Date:* These regulations are effective July 20, 2001.

Applicability Date: These regulations are applicable to transfers of property to foreign trusts and foreign estates after August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Karen A. Rennie-Quarrie, (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations relating to the Income Tax Regulations (CFR part 1) under section 684 of the Internal Revenue Code (Code). On August 7, 2000, Treasury and the IRS published a notice of proposed rulemaking (REG–108522–00) in the **Federal Register** (65 FR 48198) under section 684 of the Code relating to gain recognition on transfers of property by U.S. persons to foreign trusts and estates. Comments responding to the notice of proposed rulemaking were received and a public hearing was held on November 8, 2000. After consideration of all comments, the proposed regulations are adopted as final regulations as revised by this Treasury decision.

Explanation of Provisions

I. Comments and Changes to § 1.684–1: Recognition of Gain on Transfers to Certain Foreign Trusts and Estates

Under the proposed regulations, a U.S. person who transfers property to a foreign trust or estate generally must recognize gain immediately even if deferral might otherwise be permitted under another provision of the Code.

One commenter questioned the authority for the conclusion in § 1.684–1(d) *Example 4* that a U.S. person must recognize gain immediately upon the transfer of appreciated property to a foreign trust in exchange for a private annuity. The general rule in section 684(a) provides, in part, that the transfer to the foreign trust is treated as a sale or exchange for an amount equal to the fair market value of the property transferred and the transferor must recognize the gain in the property, except as provided in regulations. The language of section 684(a) does not provide for any deferral of this gain. Moreover, the legislative history of former section 1491 (the predecessor of section 684 regarding transfers of property by U.S. persons to foreign trusts) makes it clear that Congress did not look favorably upon deferral in the context of transfers to foreign trusts in exchange for private annuities: ''The committee believes that any policy in favor of permitting deferral of tax in private annuity transactions should not apply to a private annuity transaction with a foreign trust.'' S. Rep. No. 94–938, at 217, n.5 (1976). Therefore, Treasury and the IRS do not believe it would be appropriate to adopt regulations that would permit deferral in such a case. The final regulations retain *Example 4* without modification.

II. Comments and Changes to § 1.684–2: Transfers

The proposed regulations define the term *transfer* broadly to mean any direct, indirect, or constructive transfer. Section 1.684–2(e) of the proposed regulations provides that if any portion of a foreign trust is treated as owned by a U.S. person and such portion ceases to be treated as owned by such U.S. person, the U.S. person is treated as having transferred the assets of such portion to a foreign trust immediately before the trust is no longer treated as owned by the U.S. person. Section 1.684–2(e)(2) *Example 2* illustrates this rule in the case of the death of the grantor.

One commenter questioned the authority for the position that death is a transfer to which section 684 applies. Section 684(a) expressly applies to ''*any*

transfer of property by a United States person to a foreign estate or trust'' (emphasis added). Section 679 also generally applies to transfers of property by U.S. persons to foreign trusts. In the case of section 679, however, section 679(a)(2)(A) specifically excepts transfers by reason of death from the application of the general rule of section 679. This exception implies that Congress believed that, unless otherwise excepted, a transfer by reason of death would be a transfer to which section 679 applied. Because Congress provided no exception in section 684 for transfers by reason of death, it follows that section 684 applies to such transfers. Additional support for this conclusion is found in the information reporting rules in section 6048(a)(3)(A)(ii), which provides that a ''reportable event'' includes ''the transfer of any money or property (directly or indirectly) to a foreign trust by a United States person, *including a transfer by reason of death*'' (emphasis added). Although section 684 generally applies to transfers by reason of death, § 1.684–3(c) provides an exception to the general rule of gain recognition in the case of certain transfers at death.

One commenter requested guidance concerning a transfer of property by a domestic trust (that is not treated as owned by another person) to a foreign trust as a result of the testamentary exercise of a limited power of appointment with respect to the domestic trust. Treasury and the IRS believe that, under general principles regarding limited powers of appointment, the domestic trust, and not the holder of the limited power of appointment, is the transferor of the property. Accordingly, the domestic trust must recognize gain under the general rule of § 1.684–1(a) unless an exception applies. The final regulations do not include any special rules for such transfers.

One commenter asked about the interaction of § 1.684–2(d) and § 1.684–2(e) in the context of an actual transfer of property from a foreign trust that is treated as owned by a U.S. person to either a foreign charitable organization or a U.S. charity. Under § 1.684–2(d) of the proposed regulations, if any portion of a trust is treated as owned by a U.S. person, a transfer of property from that portion of the trust to a foreign trust is treated as a transfer from the owner. Under § 1.684–2(e) of the proposed regulations, if a portion of a foreign trust that is treated as owned by a U.S. person ceases to be treated as owned by the U.S. person, the U.S. person is treated as having transferred the assets of that portion of the trust to a foreign trust immediately before such portion is no longer treated as owned by the U.S. person.

The commenter noted that § 1.684–2(e) of the proposed regulation could be read to apply in situations where a portion of a foreign trust ceases to be treated as owned by a U.S. person because of an actual transfer of property from the trust. The final regulations clarify that § 1.684–2(e) does not apply (and that § 1.684–2(d) may apply) when any portion of a trust ceases to be owned by a U.S. person by reason of an actual transfer of property from the trust. As a result, the general rule of gain recognition under § 1.684–1(a) would not apply to an actual transfer by a foreign trust that is treated as owned by a U.S. person to a foreign charitable trust that meets the requirements of § 1.684–3(b), or to a U.S. charity, even if the transfer causes the portion of the trust to cease to be owned by the U.S. person.

III. Comments and Changes to § 1.684–3: Exceptions to the General Rule of Gain Recognition

Section 1.684–3(a) of the proposed regulations provides that a U.S. person who transfers property to a foreign trust is not required to recognize gain on the transfer to the extent that any person is treated as the owner of the trust under section 671. One commenter questioned whether the term *any person* includes foreign persons. Although not specifically addressed in the final regulations, it is understood that the term *any person* includes foreign as well as U.S. persons.

Section 1.684–3(b) of the proposed regulations provides an exception for transfers to a foreign trust that has already received a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3), provided that the letter has been neither revoked nor modified. Commenters questioned the requirement that a foreign trust obtain a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3). They assert that the requirement may interfere with a U.S. person's ability to make contributions to a foreign charitable entity that may not be familiar with U.S. tax laws and may not have any reason to obtain a determination letter from the IRS. They suggest that the final regulations require only that the U.S. transferor disclose to the IRS, at such time and in such manner as the IRS may provide, that the transfer has been made and that the U.S. transferor believes the transferee is an organization described in section 501(c)(3).

In response to commenters' concerns, the final regulations eliminate the requirement that the foreign trust receive a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3). The final regulations provide, instead, that the general rule of gain recognition does not apply to any transfer of property to a foreign trust that is described in section 501(c)(3) (without regard to the requirements of section 508(a)). However, taxpayers should be aware that, under Notice 97–34 (1997–1 C.B. 422), the U.S. transferor has a reporting obligation on Form 3520 with respect to such a transfer, unless the foreign trust has received a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3). Moreover, if the IRS subsequently determines that the foreign trust is not described in section 501(c)(3), the exception will not apply and the U.S. transferor will be required to recognize gain as of the time of the original transfer, and may be subject to interest and penalties, if applicable.

Section 1.684–3(c) of the proposed regulations provides an exception for transfers of property by reason of the death of the U.S. transferor if both of the following requirements are satisfied: (1) The property is included in the U.S. transferor's gross estate for Federal estate tax purposes, and (2) the basis of the property in the hands of the foreign trust is determined under section 1014(a). One commenter questioned whether section 684 would apply in the case of an individual who is a U.S. person for income tax purposes, but a non-domiciliary for estate tax purposes, with the result that the property of the individual would be entitled to a step-up in basis, but would not be included in the individual's gross estate. The final regulations eliminate the requirement that the property be included in the U.S. transferor's gross estate and allow the exception to apply as long as the basis of the property in the hands of the foreign trust is determined under section 1014(a).

Another commenter requested that the final regulations confirm that section 1032 applies to provide for nonrecognition of gain on issuer stock transferred to a foreign trust. The commenter noted that under former section 1491, no excise tax was imposed on a transfer of stock by a foreign corporation to a foreign trust if the corporation was not required to recognize gain on the transfer under section 1032. See Notice 97–18 (1997–1 C.B. 389, Sec. II.A.1). In response to this comment, § 1.684–3(e) of the final regulations provides a new exception

for transfers of stock (including treasury stock) by a domestic corporation to a foreign trust if the domestic corporation is not required to recognize gain on the transfer under section 1032.

Commenters also suggested that contributions by U.S. persons to foreign compensatory trusts described in sections 402(b), 404(a)(4), or 404A should be exempt from gain recognition under section 684. Treasury and the IRS have considered the proposed exception but do not believe it is consistent with the intended purpose of section 684. Accordingly, the final regulations do not include an exception for transfers to foreign compensatory trusts. However, the exception for transfers of stock to which section 1032 would apply may be available in appropriate cases for transfers of stock of a domestic parent company to a foreign compensatory trust set up by a foreign subsidiary.

Another commenter requested an exception for transfers of life insurance contracts to foreign trusts. The commenter noted that the proceeds of life insurance contracts do not generally give rise to any taxable gain if held by a U.S. individual or trust. Congress has recognized that life insurance contracts might be used to effectuate inappropriate outbound transfers of property. As part of the repeal of section 1491 in 1997, Congress enacted section 1035(c), which provides regulatory authority to deny the nonrecognition treatment given to exchanges of life insurance contracts under section 1035(a) where the exchange has the effect of transferring property to any person other than a U.S. person. Public Law 105–34, § 1131(b)[(c)](1). Because of the potential for abuse and the lack of a compelling reason for creating an exception for offshore transfers of life insurance contracts, Treasury and the IRS have concluded that such an exception is not warranted.

IV. Comments and Changes to § 1.684–4: Outbound Migration of Domestic Trusts

Section 1.684–4 of the proposed regulation provides that if a U.S. person transfers property to a domestic trust and, for any reason, the domestic trust becomes a foreign trust, the domestic trust will be deemed to have transferred all of its assets to a foreign trust and the domestic trust must immediately recognize gain. The proposed regulations do, however, incorporate the relief for inadvertent migrations that is set forth in § 301.7701–7(d)(2).

One commenter suggested that the final regulations should extend the inadvertent migration rules of § 301.7701–7(d)(2) to apply to § 301.7701–7(f), which deals with the election by certain trusts to remain domestic trusts. Under § 301.7701–7(d)(2), in the event of an inadvertent change in any person that has the power to make a substantial decision of the trust that would cause the domestic or foreign residency of the trust to change (e.g., an inadvertent change from a U.S. trustee to a foreign trustee by reason of the U.S. trustee's death), the trust is allowed 12 months to make necessary changes to avoid a change in the trust's residency (e.g., the replacement of the foreign successor trustee with a U.S. successor trustee). The commenter suggests that a trust with an election in force under § 301.7701–7(d)(2) should be allowed a similar amount of time to make necessary changes if a U.S. trustee is inadvertently replaced by a foreign trustee.

The final regulations do not include such a rule. Under § 301.7701–7(f), a trust generally can elect to remain a domestic trust if it was in existence on August 20, 1996, and it was treated as a domestic trust on August 19, 1996. Section 301.7701–7(f)(4)(ii) provides that such an election terminates if subsequent changes are made to the trust that result in the trust no longer having any reasonable basis for being treated as a domestic trust under section 7701(a)(30) prior to its amendment by the Small Business Job Protection Act of 1996 (SBJP Act), Pub. L. 104–188, 110 Stat. 1755. Whereas the ''control test'' of section 7701(a)(30)(E)(ii), as enacted by the SBJP Act, contains a relatively bright-line test for purposes of determining a trust's status, thereby necessitating the inadvertent migration rule of § 301.7701–7(d)(2), the determination of domestic or foreign status prior to the SBJP Act was governed by less objective criteria.

Under pre-SBJP Act law, an inadvertent short-term replacement of a domestic trustee by a foreign trustee would not necessarily cause a change in the trust's status. Accordingly, a specific inadvertent migration rule for § 301.7701–7(f) is not appropriate. Instead, as set forth in § 301.7701–7(f)(4)(ii), an election under § 301.7701–7(f) will not be terminated unless the trust has no reasonable basis for being treated as a domestic trust under pre-SBJP Act law.

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 and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Karen A. Rennie-Quarrie of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.684–1 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684–2 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684–3 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684–4 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684–5 also issued under 26 U.S.C. 643(a)(7) and 684(a). * * *

Par. 2. Sections 1.684–1, 1.684–2, 1.684–3, 1.684–4 and 1.684–5 are added under the undesignated centerheading ''Miscellaneous'' to read as follows:

§ 1.684–1 Recognition of gain on transfers to certain foreign trusts and estates.

(a) *Immediate recognition of gain*—(1) *In general.* Any U.S. person who transfers property to a foreign trust or foreign estate shall be required to recognize gain at the time of the transfer equal to the excess of the fair market value of the property transferred over the adjusted basis (for purposes of determining gain) of such property in the hands of the U.S. transferor unless an exception applies under the provisions of § 1.684–3. The amount of

gain recognized is determined on an asset-by-asset basis.

(2) *No recognition of loss.* Under this section a U.S. person may not recognize loss on the transfer of an asset to a foreign trust or foreign estate. A U.S. person may not offset gain realized on the transfer of an appreciated asset to a foreign trust or foreign estate by a loss realized on the transfer of a depreciated asset to the foreign trust or foreign estate.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *U.S. person.* The term *U.S. person* means a United States person as defined in section 7701(a)(30), and includes a nonresident alien individual who elects under section 6013(g) to be treated as a resident of the United States.

(2) *U.S. transferor.* The term *U.S. transferor* means any U.S. person who makes a transfer (as defined in § 1.684–2) of property to a foreign trust or foreign estate.

(3) *Foreign trust.* Section 7701(a)(31)(B) defines foreign trust. See also § 301.7701–7 of this chapter.

(4) *Foreign estate.* Section 7701(a)(31)(A) defines foreign estate.

(c) *Reporting requirements.* A U.S. person who transfers property to a foreign trust or foreign estate must comply with the reporting requirements under section 6048.

(d) *Examples.* The following examples illustrate the rules of this section. In all examples, *A* is a U.S. person and *FT* is a foreign trust. The examples are as follows:

Example 1. Transfer to foreign trust. A transfers property that has a fair market value of 1000X to *FT*. *A*'s adjusted basis in the property is 400X. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. Under paragraph (a)(1) of this section, *A* recognizes gain at the time of the transfer equal to 600X.

Example 2. Transfer of multiple properties. A transfers property Q, with a fair market value of 1000X, and property R, with a fair market value of 2000X, to *FT*. At the time of the transfer, *A*'s adjusted basis in property Q is 700X, and *A*'s adjusted basis in property R is 2200X. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. Under paragraph (a)(1) of this section, *A* recognizes the 300X of gain attributable to property Q. Under paragraph (a)(2) of this section, *A* does not recognize the 200X of loss attributable to property R, and may not offset that loss against the gain attributable to property Q.

Example 3. Transfer for less than fair market value. A transfers property that has a fair market value of 1000X to *FT* in exchange for 400X of cash. *A*'s adjusted basis in the property is 200X. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. Under paragraph (a)(1) of this section, *A* recognizes gain at the time of the transfer equal to 800X.

Example 4. Exchange of property for private annuity. A transfers property that has a fair market value of 1000X to *FT* in exchange for *FT*'s obligation to pay A 50X per year for the rest of *A*'s life. *A*'s adjusted basis in the property is 100X. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. *A* is required to recognize gain equal to 900X immediately upon transfer of the property to the trust. This result applies even though *A* might otherwise have been allowed to defer recognition of gain under another provision of the Internal Revenue Code.

Example 5. Transfer of property to related foreign trust in exchange for qualified obligation. A transfers property that has a fair market value of 1000X to *FT* in exchange for *FT*'s obligation to make payments to *A* during the next four years. *FT* is related to *A* as defined in § 1.679–1(c)(5). The obligation is treated as a qualified obligation within the meaning of § 1.679–4(d), and no person is treated as owning any portion of *FT*. *A*'s adjusted basis in the property is 100X. *A* is required to recognize gain equal to 900X immediately upon transfer of the property to the trust. This result applies even though *A* might otherwise have been allowed to defer recognition of gain under another provision of the Internal Revenue Code. Section 1.684–3(d) provides rules relating to transfers for fair market value to unrelated foreign trusts.

§ 1.684–2 Transfers.

(a) *In general.* A transfer means a direct, indirect, or constructive transfer.

(b) *Indirect transfers*—(1) *In general.* Section 1.679–3(c) shall apply to determine if a transfer to a foreign trust or foreign estate, by any person, is treated as an indirect transfer by a U.S. person to the foreign trust or foreign estate.

(2) *Examples.* The following examples illustrate the rules of this paragraph (b). In all examples, *A* is a U.S. citizen, *FT* is a foreign trust, and *I* is *A*'s uncle, who is a nonresident alien. The examples are as follows:

Example 1. Principal purpose of tax avoidance. A creates and funds *FT* for the benefit of *A*'s cousin, who is a nonresident alien. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. In 2004, *A* decides to transfer additional property with a fair market value of 1000X and an adjusted basis of 600X to *FT*. Pursuant to a plan with a principal purpose of avoiding the application of section 684, *A* transfers the property to *I*. *I* subsequently transfers the property to *FT*. Under paragraph (b) of this section and § 1.679–3(c), *A* is treated as having transferred the property to *FT*.

Example 2. U.S. person unable to demonstrate that intermediary acted independently. A creates and funds *FT* for the benefit of *A*'s cousin, who is a nonresident alien. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. On July 1, 2004, *A* transfers property with a fair market value of 1000X and an adjusted basis of 300X to *I*, a foreign person. On January 1, 2007, at a time when the fair market value of the property is 1100X, *I* transfers the property to *FT*. *A* is unable to demonstrate to the satisfaction of the Commissioner, under § 1.679–3(c)(2)(ii), that *I* acted independently of *A* in making the transfer to *FT*. Under paragraph (b) of this section and § 1.679–3(c), *A* is treated as having transferred the property to *FT*. Under paragraph (b) of this section and § 1.679–3(c)(3), *I* is treated as an agent of *A*, and the transfer is deemed to have been made on January 1, 2007. Under § 1.684–1(a), *A* recognizes gain equal to 800X on that date.

(c) *Constructive transfers.* Section 1.679–3(d) shall apply to determine if a transfer to a foreign trust or foreign estate is treated as a constructive transfer by a U.S. person to the foreign trust or foreign estate.

(d) *Transfers by certain trusts*—(1) *In general.* If any portion of a trust is treated as owned by a U.S. person, a transfer of property from that portion of the trust to a foreign trust is treated as a transfer from the owner of that portion to the foreign trust.

(2) *Examples.* The following examples illustrate the rules of this paragraph (d). In all examples, *A* is a U.S. person, *DT* is a domestic trust, and *FT* is a foreign trust. The examples are as follows:

Example 1. Transfer by a domestic trust. On January 1, 2001, *A* transfers property which has a fair market value of 1000X and an adjusted basis of 200X to *DT*. *A* retains the power to revoke *DT*. On January 1, 2003, *DT* transfers property which has a fair market value of 500X and an adjusted basis of 100X to *FT*. At the time of the transfer, *FT* has no U.S. beneficiary as defined in § 1.679–2 and no person is treated as owning any portion of *FT*. *A* is treated as having transferred the property to *FT* and is required to recognize gain of 400X, under § 1.684–1, at the time of the transfer by *DT* to *FT*.

Example 2. Transfer by a foreign trust. On January 1, 2001, *A* transfers property which has a fair market value of 1000X and an adjusted basis of 200X to *FT1*. At the time of the transfer, *FT1* has a U.S. beneficiary as defined in § 1.679–2 and *A* is treated as the owner of *FT1* under section 679. On January 1, 2003, *FT1* transfers property which has a fair market value of 500X and an adjusted basis of 100X to *FT2*. At the time of the transfer, *FT2* has no U.S. beneficiary as defined in § 1.679–2 and no person is treated as owning any portion of *FT2*. *A* is treated as having transferred the property to *FT2* and is required to recognize gain of 400X, under § 1.684–1, at the time of the transfer by *FT1* to *FT2*.

(e) *Deemed transfers when foreign trust no longer treated as owned by a U.S. person*—(1) *In general.* If any portion of a foreign trust is treated as

owned by a U.S. person under subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, and such portion ceases to be treated as owned by that person under such subpart (other than by reason of an actual transfer of property from the trust to which § 1.684–2(d) applies), the U.S. person shall be treated as having transferred, immediately before (but on the same date that) the trust is no longer treated as owned by that U.S. person, the assets of such portion to a foreign trust.

(2) *Examples.* The following examples illustrate the rules of this paragraph (e). In all examples, *A* is a U.S. citizen and *FT* is a foreign trust. The examples are as follows:

Example 1. Loss of U.S. beneficiary.—(i) On January 1, 2001, *A* transfers property, which has a fair market value of 1000X and an adjusted basis of 400X, to *FT.* At the time of the transfer, *FT* has a U.S. beneficiary within the meaning of § 1.679–2, and *A* is treated as owning *FT* under section 679. Under § 1.684–3(a), § 1.684–1 does not cause *A* to recognize gain at the time of the transfer.

(ii) On July 1, 2003, *FT* ceases to have a U.S. beneficiary as defined in § 1.679–2(c) and as of that date neither *A* nor any other person is treated as owning any portion of *FT.* Pursuant to § 1.679–2(c)(2), if *FT* ceases to be treated as having a U.S. beneficiary, *A* will cease to be treated as owner of *FT* beginning on the first day of the first taxable year following the last taxable year in which there was a U.S. beneficiary. Thus, on January 1, 2004, *A* ceases to be treated as owner of *FT.* On that date, the fair market value of the property is 1200X and the adjusted basis is 350X. Under paragraph (e)(1) of this section, *A* is treated as having transferred the property to *FT* on January 1, 2004, and must recognize 850X of gain at that time under § 1.684–1.

Example 2. Death of grantor. (i) The initial facts are the same as in paragraph (i) of *Example 1.*

(ii) On July 1, 2003, *A* dies, and as of that date no other person is treated as the owner of *FT.* On that date, the fair market value of the property is 1200X, and its adjusted basis equals 350X. Under paragraph (e)(1) of this section, *A* is treated as having transferred the property to *FT* immediately before his death, and generally is required to recognize 850X of gain at that time under § 1.684–1. However, an exception may apply under § 1.684–3(c).

Example 3. Release of a power. (i) On January 1, 2001, *A* transfers property that has a fair market value of 500X and an adjusted basis of 200X to *FT.* At the time of the transfer, *FT* does not have a U.S. beneficiary within the meaning of § 1.679–2. However, *A* retains the power to revoke the trust. *A* is treated as the owner of the trust under section 676 and, therefore, under § 1.684–3(a), *A* is not required to recognize gain under § 1.684–1 at the time of the transfer.

(ii) On January 1, 2007, *A* releases the power to revoke the trust and, as of that date, neither *A* nor any other person is treated as owning any portion of *FT.* On that date, the fair market value of the property is 900X, and its adjusted basis is 200X. Under paragraph (e)(1) of this section, *A* is treated as having transferred the property to *FT* on January 1, 2007, and must recognize 700X of gain at that time.

(f) *Transfers to entities owned by a foreign trust.* Section 1.679–3(f) provides rules that apply with respect to transfers of property by a U.S. person to an entity in which a foreign trust holds an ownership interest.

§ 1.684–3 Exceptions to general rule of gain recognition.

(a) *Transfers to grantor trusts.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of property by a U.S. person to a foreign trust to the extent that any person is treated as the owner of the trust under section 671. Section 1.684–2(e) provides rules regarding a subsequent change in the status of the trust.

(b) *Transfers to charitable trusts.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of property to a foreign trust that is described in section 501(c)(3) (without regard to the requirements of section 508(a)).

(c) *Certain transfers at death.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of property by reason of death of the U.S. transferor if the basis of the property in the hands of the foreign trust is determined under section 1014(a).

(d) *Transfers for fair market value to unrelated trusts.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of property for fair market value to a foreign trust that is not a related foreign trust as defined in § 1.679–1(c)(5). Section 1.671–2(e)(2)(ii) defines fair market value.

(e) *Transfers to which section 1032 applies.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of stock (including treasury stock) by a domestic corporation to a foreign trust if the domestic corporation is not required to recognize gain on the transfer under section 1032.

(f) *Certain distributions to trusts.* For purposes of this section, a transfer does not include a distribution to a trust with respect to an interest held by such trust in an entity other than a trust or an interest in certain investment trusts described in § 301.7701–4(c) of this chapter, liquidating trusts described in § 301.7701–4(d) of this chapter, or environmental remediation trusts described in § 301.7701–4(e) of this chapter.

(g) *Examples.* The following examples illustrate the rules of this section. In all examples, *A* is a U.S. citizen and *FT* is a foreign trust. The examples are as follows:

Example 1. Transfer to owner trust. In 2001, *A* transfers property which has a fair market value of 1000X and an adjusted basis equal to 400X to *FT.* At the time of the transfer, *FT* has a U.S. beneficiary within the meaning of § 1.679–2, and *A* is treated as owning *FT* under section 679. Under paragraph (a) of this section, § 1.684–1 does not cause *A* to recognize gain at the time of the transfer. See § 1.684–2(e) for rules that may require *A* to recognize gain if the trust is no longer owned by *A.*

Example 2. Transfer of property at death: Basis determined under section 1014(a). (i) The initial facts are the same as *Example 1.*

(ii) *A* dies on July 1, 2004. The fair market value at *A*'s death of all property transferred to *FT* by *A* is 1500X. The basis in the property is 400X. *A* retained the power to revoke *FT,* thus, the value of all property owned by *FT* at *A*'s death is includible in *A*'s gross estate for U.S. estate tax purposes. Pursuant to paragraph (c) of this section, *A* is not required to recognize gain under § 1.684–1 because the basis of the property in the hands of the foreign trust is determined under section 1014(a).

Example 3. Transfer of property at death: Basis not determined under section 1014(a).

(i) The initial facts are the same as *Example 1.*

(ii) *A* dies on July 1, 2004. The fair market value at *A*'s death of all property transferred to *FT* by *A* is 1500X. The basis in the property is 400X. *A* retains no power over *FT,* and *FT*'s basis in the property transferred is not determined under section 1014(a). Under § 1.684–2(e)(1), *A* is treated as having transferred the property to *FT* immediately before his death, and must recognize 1100X of gain at that time under § 1.684–1.

Example 4. Transfer of property for fair market value to an unrelated foreign trust. A sells a house with a fair market value of 1000X to *FT* in exchange for a 30-year note issued by *FT. A* is not related to *FT* as defined in § 1.679–1(c)(5). *FT* is not treated as owned by any person. Pursuant to paragraph (d) of this section, *A* is not required to recognize gain under § 1.684–1.

§ 1.684–4 Outbound migrations of domestic trusts.

(a) *In general.* If a U.S. person transfers property to a domestic trust, and such trust becomes a foreign trust, and neither trust is treated as owned by any person under subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, the trust shall be treated for purposes of this section as having transferred all of its assets to a foreign trust and the trust is required to recognize gain on the transfer under § 1.684–1(a). The trust must also comply with the rules of section 6048.

(b) *Date of transfer.* The transfer described in this section shall be deemed to occur immediately before, but on the same date that, the trust

meets the definition of a foreign trust set forth in section 7701(a)(31)(B).

(c) *Inadvertent migrations.* In the event of an inadvertent migration, as defined in § 301.7701–7(d)(2) of this chapter, a trust may avoid the application of this section by complying with the procedures set forth in § 301.7701–7(d)(2) of this chapter.

(d) *Examples.* The following examples illustrate the rules of this section. In all examples, *A* is a U.S. citizen, *B* is a U.S. citizen, *C* is a nonresident alien, and *T* is a trust. The examples are as follows:

Example 1. Migration of domestic trust with U.S. beneficiaries. A transfers property which has a fair market value of 1000X and an adjusted basis equal to 400X to *T*, a domestic trust, for the benefit of *A*'s children who are also U.S. citizens. *B* is the trustee of *T*. On January 1, 2001, while *A* is still alive, *B* resigns as trustee and *C* becomes successor trustee under the terms of the trust. Pursuant to § 301.7701–7(d) of this chapter, *T* becomes a foreign trust. *T* has U.S. beneficiaries within the meaning of § 1.679–2 and *A* is, therefore, treated as owning *FT* under section 679. Pursuant to § 1.684–3(a), neither *A* nor *T* is required to recognize gain at the time of the migration. Section 1.684–2(e) provides rules that may require *A* to recognize gain upon a subsequent change in the status of the trust.

Example 2. Migration of domestic trust with no U.S. beneficiaries. A transfers property which has a fair market value of 1000X and an adjusted basis equal to 400X to *T*, a domestic trust for the benefit of *A*'s mother who is not a citizen or resident of the United States. *T* is not treated as owned by another person. *B* is the trustee of *T*. On January 1, 2001, while *A* is still alive, *B* resigns as trustee and *C* becomes successor trustee under the terms of the trust. Pursuant to § 301.7701–7(d) of this chapter, *T* becomes a foreign trust, *FT*. *FT* has no U.S. beneficiaries within the meaning of § 1.679–2 and no person is treated as owning any portion of *FT*. *T* is required to recognize gain of 600X on January 1, 2001. Paragraph (c) of this section provides rules with respect to an inadvertent migration of a domestic trust.

§ 1.684–5 Effective date.

Sections 1.684–1 through 1.684–4 apply to transfers of property to foreign trusts and foreign estates after August 7, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 9, 2001.

Mark Weinberger,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 01–17972 Filed 7–19–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Parts 0 and 27

[A.G. Order No. 2492–2001]

Office of the Inspector General

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Department's organizational regulations to revise the description of the functions and responsibilities of the Office of the Inspector General. The amendments concern the jurisdiction of the Office of the Inspector General to investigate allegations of misconduct by employees of the Federal bureau of Investigation and Drug Enforcement Administration. This rule also makes conforming changes to the Department's existing regulations concerning the investigation of whistleblower disclosures made by employees of the FBI.

EFFECTIVE DATE: July 11, 2001.

FOR FURTHER INFORMATION CONTACT: Kevin R. Jones, Deputy Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice, Washington, DC 20530, (202) 514–4604.

SUPPLEMENTARY INFORMATION: The Attorney General is amending current Department of Justice regulations, in Part 0, Subpart E–4 of title 28, Code of Federal Regulations, describing the jurisdiction and functions of the Office of the Inspector General (OIG). Currently, evidence and non-frivolous allegations of serious misconduct by employees of the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) must be reported to the FBI Office of Professional Responsibility (FBI–OPR) and the DEA Office of Professional Responsibility (DEA–OPR), respectively. The OIG refers to FBI–OPR and DEA–OPR allegations of misconduct within their respective jurisdictions for appropriate action. The OIG refers to the Department's Office of Professional Responsibility (OPR) allegations of serious misconduct (1) by Department attorneys relating to the exercise of their authority to investigate, litigate, or provide legal advice; and (2) by Department law enforcement personnel relating to (or in connection with) allegations of misconduct by a Department attorney that relate to the exercise of the attorney's authority to investigate, litigate, or provide legal advice. At the request of the Inspector General, the Deputy Attorney General may assign to the OIG a matter within the jurisdiction of FBI–OPR, DEA–OPR, or DOJ–OPR.

Pursuant to these amendments, all evidence and non-frivolous allegations of criminal wrongdoing and serious administrative misconduct by Department of Justice employees shall be reported to the OIG except for those allegations concerning serious misconduct by Department attorneys or investigators that are within the jurisdiction of OPR. With respect to evidence and non-frivolous allegations of criminal wrongdoing and serious administrative misconduct by employees of the FBI and DEA, the OIG will determine whether it will investigate such allegations or whether they will be investigated by FBI–OPR or DEA–OPR.

This rule also makes changes to the Department's existing regulations in 28 CFR 27.1(b) with respect to the investigations of whistleblower disclosures made by employees of the FBI, in order to conform with the provisions of Part 0, Subpart E–4, as amended, regarding the authority of the OIG. In addition, this rule makes a technical change to § 27.4 to reflect recent change in name of the Office of Attorney Personnel Management to the Office of Attorney Recruitment and Management.

Certifications and Determinations

Administrative Procedure Act

This rule relates to matters of agency management or personnel, and is therefore exempt from the usual requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2). Moreover, to the extent that rulemaking procedures are otherwise applicable, the Department finds that this is exempt from the requirements of prior notice and comment as a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). Similarly, the effective date of the rule need not be delayed for 30 days after publication because the rule is not a ''substantive rule.'' *See* 5 U.S.C. 553(d); 5 U.S.C. 552(a)(1)(D).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. It is a rule relating to agency management or personnel and is therefore excluded from the scope of a covered ''rule'' for purposes of Chapter 8 of Title 5, U.S.C. *See* 5 U.S.C. 804(3)(B). Moreover, to the extent that this rule would be

considered to be a rule of agency organization, procedure, or practice, it is excluded from the scope of a covered ''rule'' pursuant to 5 U.S.C. 804(3)(C). The amendments relate to the Attorney General's determination with respect to how Department of Justice components shall handle certain matters within the authority of the Attorney General as head of the Department of Justice, and the Department has determined that this rule does not substantially affect the rights or obligations of non-agency parties.

Accordingly, because this action is not a covered ''rule,'' it is exempt from the requirement for the Department to submit a report to each House of Congress and to the Comptroller General before this rule can take effect, as provided in 5 U.S.C. 801(a)(1).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review. The Department of Justice has determined that this is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, and that it relates to a matter of agency organization, management, or personnel. See Executive Order 12866, section 3(d)(3). Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects

28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

28 CFR Part 27

Government Employees, Justice Department, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, Part 0, Subpart E–4, and Part 27 of title 28 of the Code of Federal Regulations, are amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation of part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Paragraph (a) of section 0.29c is revised to read as follows:

§ 0.29c Reporting allegations of employee misconduct.

(a) *Reporting to the OIG.* Evidence and non-frivolous allegations of criminal wrongdoing or serious administrative misconduct by Department employees shall be reported to the OIG, or to a supervisor or a Department component's internal affairs office for referral to the OIG, except as provided in paragraph (b) of this section.

* * * * *

3. Paragraph (c) of § 0.29c is amended by adding the words ''by the OIG'' between the words ''reported'' and ''to''.

4. Paragraph (d) of § 0.29c is amended by adding the words ''by the OIG'' between the words ''reported'' and ''to''.

5. In § 0.29d, paragraph (a) is revised to read as follows:

§ 0.29d Whistleblower protection for FBI employees.

(a) *Protected disclosures by FBI employees.* Disclosures of information by an FBI employee that the employee reasonably believes evidences a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety are protected disclosures when they are reported as provided in § 27.1 of this chapter. Any office or official (other than the OIG or DOJ–OPR) receiving a protected disclosure shall promptly report such disclosure to the OIG or DOJ–OPR. The OIG or DOJ–OPR may refer such allegations to FBI–OPR for investigation unless the Deputy Attorney General determines that such referral shall not be made.

* * * * *

6. Section 0.29e is amended by:

a. Revising paragraphs (a)(1), (a)(2), (a)(3), and (a)(5);

b. Amending the introductory text in paragraph (a)(6) by removing ''another internal investigative component'' and by adding in its place ''DOJ–OPR'';

c. Amending paragraph (a)(6)(i) by removing ''the component'' and by adding in its place ''DOJ–OPR'';

d. Amending paragraph (a)(7) by removing ''the other investigative component'' and by adding in its place ''DOJ–OPR''; to read as follows:

§ 29e Relationship to other departmental units.

(a) * * *

(1) The OIG refers to DOJ–OPR allegations of misconduct within DOJ–OPR's jurisdiction and may refer to another component the investigation of an allegation of misconduct on the part of an employee of that component;

(2) The OIG may refer to a Department component's internal affairs office allegations of misconduct within that office's jurisdiction or may investigate such allegations on its own;

(3) DOJ–OPR refers to the OIG allegations involving misconduct by Department attorneys or investigators that do not relate to the exercise of an attorney's authority to investigate, litigate, or provide legal advice.

(4) * * *

(5) All Department components report to the OIG all non-frivolous allegations of criminal wrongdoing and serious administrative misconduct involving any of their employees except allegations involving Department attorneys and investigators that relate to an attorney's authority to litigate, investigate, or provide legal advice.

* * * * *

§ 0.29h Specific authorities of the Inspector General.

7. Paragraph (a) of section 0.29h is amended by removing ''the'' between ''to'' and ''administration'' and by adding in its place ''criminal wrongdoing and administrative

misconduct of Department employees and''.

PART 27—WHISTLEBLOWER PROTECTION FOR FEDERAL BUREAU OF INVESTIGATION EMPOYEES

8. The authority citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515–519; President's Memorandum to the Attorney General, Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978, 3 CFR p. 284 (1997).

9. In § 27.1, paragraph (b) is revised to read as follows:

§ 27.1 Making a protected disclosure.

* * * * *

(b) Any office or official (other than the OIG or OPR) receiving a protected disclosure shall promptly report such disclosure to the OIG or OPR for investigation. The OIG and OPR shall proceed in accordance with procedures establishing their respective jurisdiction. The OIG or OPR may refer such allegations to FBI–OPR for investigation unless the Deputy Attorney General determines that such referral shall not be made.

§ 27.4 Corrective action and other relief; Director, Office of Attorney Recruitment and Management.

10. In § 27.4, the heading is revised to read as shown above.

11. In § 27.4, paragraph (a) is amended by removing ''Attorney Personnel Management'' and by adding in its place ''Attorney Recruitment and Management''.

Dated: July 11, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–18087 Filed 7–19–01; 8:45 am]

BILLING CODE 4410–AR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 123–1123a; FRL–7015–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP). EPA is approving a revision to Missouri rule ''Control of Emissions From Industrial Surface Coating Operations.'' This revision will ensure consistency between the state and Federally approved rules, and ensure Federal enforceability of the state's air program rule revision pursuant to section 110 of the Clean Air Act.

EFFECTIVE DATE: This direct final rule will be effective September 18, 2001 unless EPA receives adverse comments by August 20, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we, us, or our'' is used, we mean EPA.

This section provides additional information by addressing the following questions:

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

What Is a SIP?

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

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

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

What Is the Federal Approval Process for a SIP?

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

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

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

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

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

What Is Being Addressed in This Notice?

The state of Missouri has requested that EPA approve as a revision to the Missouri SIP recently adopted revisions to rule 10 CSR 10–5.330, ''Control of Emissions From Industrial Surface Coating Operations.'' This rule is

applicable in the St. Louis nonattainment area.

This rule was revised to delete conditions for aerospace manufacture and rework facilities which are also contained in rule 10 CSR 10–5.295, ''Control of Emissions From Aerospace Manufacture and Rework Facilities.'' This revision eliminates duplicate requirements for these facilities, but does not relax any applicable requirements.

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

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

What Action Is EPA Taking?

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

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. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP 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 a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 September 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 29, 2001.

William Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 5 by revising the entry for ''10–5.330'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *	*	*	*	
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
* * * * *	*	*	*	
10–5.330	Control of Emissions From Industrial Surface Coating Operations.	12/30/00	7/20/01 66 FR 37906	
* * * * *	*	*	*	

* * * * *

[FR Doc. 01–18089 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 119–1119a; FRL–7015–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the state of Missouri. This approval pertains to revisions to a rule which controls emissions from aluminum foil rolling sources in the St. Louis, Missouri, nonattainment area. The effect of this approval is to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP.

DATES: This direct final rule will be effective on September 18, 2001 unless EPA receives adverse comments by August 20, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

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

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

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

What Is a SIP?
What Is the Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean to Me?
What Is Being Addressed in this Document?
Have the Requirements for Approval of a SIP Revision Been Met?
What Action Is EPA Taking?

What Is a SIP?

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

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

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

What Is the Federal Approval Process for a SIP?

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

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

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

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

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

What Is Being Addressed in This Document?

On October 25, 2000, we received a request from the Missouri Department of Natural Resources to approve as a SIP revision amendments to rule 10 CSR 10–5.451, ''Control of Emissions From Aluminum Foil Rolling.''

This rule specifies operating procedures, materials requirements, and control equipment specifications for the reduction of volatile organic compounds from aluminum foil rolling mills in the St. Louis ozone nonattainment area. There is only one source subject to this rule.

Revisions to the rule were minor. References to the final boiling point of the rolling lubricants in sections (3)(A)(1)(B) and (3)(A)(2)(B) were revised for clarification. Section (5)(A) was revised to refer to the most current American Society for Testing and Materials test method, and to add clarifying language regarding the emissions standards to which the test method applies. A minor typographical correction was made to section (3)(A)(2)(A).

This rule was adopted by the Missouri Air Conservation Commission and became state effective on September 30, 2000.

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

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

What Action Is EPA Taking?

We are processing this action as a final action because the revisions make routine changes to the existing rules, which are noncontroversial. Therefore, we do not anticipate any adverse comments.

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. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP 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 a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. 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 September 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 29, 2001.

William Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 5 by revising the entry for ''10–5.451'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * * * *				
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
* * * * * * *				
10–5.451	Control of Emissions From Aluminum Foil Rolling	09/30/00	7/20/01 66 FR 37908	.....
* * * * * * *				

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[FR Doc. 01–18091 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA168–4109a; FRL–7013–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Control of VOCs From Wood Furniture Manufacturing, Surface Coating Processes and Other Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP) submitted on October 4, 2000 by the Pennsylvania Department of Environmental Protection (DEP). The revisions include the adoption of new VOC regulations for wood furniture manufacturing operations. These revisions also add new definitions, and amend or delete certain existing definitions for terms used in regulations pertaining to volatile organic compound (VOC) sources. The revisions also clarify the requirements Pennsylvania's surface coating regulations. Lastly, the revisions include minor amendments to Pennsylvania's regulations pertaining to sampling and testing methods. EPA is approving these revisions to the Commonwealth of Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on September 18, 2001 without further notice, unless EPA receives adverse written comment by August 20, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning & Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182 or Ellen Wentworth, (215) 814–2034, at the EPA Region III address above, or by e-mail at *quinto.rose@epa.gov* or *wentworth.ellen@epa.gov*

SUPPLEMENTARY INFORMATION:

I. Description of the SIP Revision and EPA's Action

The information in this section is organized as follows:

A. What Action Is EPA Taking Today?
B. What Are the Provisions of the New and Revised Regulations?
C. Why Is EPA Approving These SIP Revisions?
D. What Is the Process for EPA Approval?

A. What Action Is EPA Taking Today?

EPA is approving revisions to the Commonwealth of Pennsylvania SIP which were submitted on October 4, 2000 by the Pennsylvania DEP. These SIP revisions amend 25 PA Code, Chapter 121, General Provisions, section 121.1, Definitions, to include the addition of new definitions, and the revision or deletion of certain existing definitions used in Chapter 129.

We are also approving revisions to 25 PA Code, Chapter 129, Standards for Sources, to add new sections, 129.101–129.107, Wood Furniture Manufacturing Operations, which establish presumptive reasonably available control technology (RACT) for wood manufacturing operations.

We are also approving revisions to 25 PA Code, Chapter 129, Standards for Sources, section 129.52, Surface Coating Processes, which clarifies which wood furniture manufacturing facilities are subject to section 129.52 and sections 129.101–129.107.

Finally, we are approving revisions to 25 PA Code, Chapter 139, Sampling and Testing, section 139.4, References, to reflect the correct name and address for the Pennsylvania Department of Environmental Protection and the Bureau of Air Quality, and section 139.14, Emissions of VOCs, to require that the test methods and procedures for the content of total volatiles, solids and exempt solvents be equivalent to those found at subsection 139.4(1) and (5).

B. What Are the New and Revised Regulations?

Chapter 121, General Provisions—Additions, Revisions, Deletions to Section 121.1, Definitions

This SIP revision adds definitions and revises or deletes certain existing definitions to Chapter 121, General Provisions, section 121.1 Definitions, for terms used in the substantive provisions of Chapter 129, Pennsylvania's regulations which contain VOC emission standards.

Additional definitions are provided for the following: Adhesive, Alternative method, As applied, As Supplied, Basecoat, CPDS—Certified Product Data Sheet, Coating, Coating solids or solids, Compliant coating, Continuous coater, Conventional air spray, Cosmetic

specialty coatings, Enamel, Equivalent method, MSDS—Material Safety Data Sheet, Nonpermanent final finish, Normally closed container, Pollution prevention, Sealer, Stain, Strippable spray booth coating, Substrate, Thinner, Touch-up and repair, Wash-off operations, Waterborne coating, Wood furniture, Wood furniture component, and Wood furniture manufacturing operations.

The following definitions have been deleted to eliminate inconsistencies between definitions for the existing surface coating requirements in section 129.52, and the newly adopted presumptive RACT requirements for wood furniture manufacturing operations in sections 129.101–129.107: Clear sealers, Opaque ground coats and enamels, Other coatings, Semitransparent spray stains, and Semitransparent wiping and glazing stains.

These amendments also include revisions to the following existing definitions: Dip coating, Miscellaneous metal parts and products, Process, Surface coating process, Topcoat, VOC-volatile organic compound, and Washcoat.

Chapter 129, Standard for Sources—Revisions to Section 129.52, Surface Coating Processes

The amendments to section 129.52, Surface Coating Processes, serve to clarify and simplify existing requirements for surface coating processes. Summaries of the revised portions of section 129.52 are listed below.

Subsection 129.52(b)(1)—The amendments delete the existing language requiring adjustment to a standard solvent density and a solids basis. This adjustment is incorporated into revisions relating to allowable content of VOCs in surface coatings by process.

Subsection 129.52(b)(1)(i)—This amendment adds an equation for calculating the VOC content of the ''as applied'' coating on the basis of weight of VOC per volume of coating solids.

Subsection 129.52(b)(1)(ii)—This amendment adds an equation for calculating the VOC content of dip coatings on a 30-day rolling average basis. The methodology for calculating the VOC content includes the gallons of thinner added to the coating in the process over any consecutive 30-day period to replace evaporated solvent.

Subsection 129.52(b)(1)(iii)—This amendment adds an equation for calculating the VOC content on the basis of weight of VOC per weight of coatings solids.

Subsection 129.52(b)(1)(iv)—The equation for dip-coating operations has been deleted because it would have established more stringent requirements than the Federal Control Technique Guideline (CTG) for Wood Furniture Manufacturing Operations. Paragraph (v) has been renumbered.

Subsection 129.52(b)2—The existing equation for calculating the percentage of emission reductions needed for compliance purposes when using control equipment has been deleted. A new equation has been added for calculating the overall efficiency of the control system based on the new units of measurement in the regulation, which is the weight of VOC per volume of solids and weight of VOC per weight of solids.

Subsection 129.52(c)—This amendment deletes the existing list of required records and adds record keeping requirements that are appropriate to the required methods used to evaluate compliance as specified in the Source Testing Manual.

Subsection 129.52(f)—Amendments to this subsection add terms that are consistent with the ''roller coating,'' and ''cosmetic specialty coatings'' definitions specified in section 121.1, Definitions.

Subsection 129.52(g)—This amendment moves the existing requirement for maintaining records for two years from section 129.52(c) to section 129.52(g) to emphasize and add clarity to the amendments.

Subsection 129.52(h)—This amendment adds an exemption from VOC emission limitations for small quantities of coatings used for determination of product quality and commercial acceptance, touch-up and repair, and other small quantity coatings. This subsection requires the facility owner or operator to submit a written request to the Department to exempt quantities of coating which do not exceed 50 gallons a year for a single coating, and a total of 200 gallons each year for all coatings combined for the facility. The Department's written approval must be obtained prior to the use of the exempted coatings.

Chapter 129, Section 129.91, Control of Major Sources of NO_X and VOCs—Revisions to Section 129.91 Subsection(a)

The amendment to subsection(a) clarifies the RACT requirements applicable to wood furniture manufacturing facilities subject to section 129.52, Category 11 (relating to surface coating processes) and sections 129.101–129.107 (wood furniture and manufacturing operations).

Chapter 129, Standards for Sources—Addition of Sections 129.101–129.107, Wood Furniture Manufacturing Operations

This SIP revision adds sections 129.101–107, Wood Furniture Manufacturing Operations, to 25 PA Code, Chapter 129, Standards for Sources, establishing requirements to control VOC emissions from wood furniture manufacturing operations including wood furniture finishing, cleaning, and wash-off operations. These regulations are based upon EPA's CTG for the control of VOCs from wood furniture manufacturing operations and establish presumptive RACT requirements for certain wood manufacturing operations. Summary of the provisions of the new regulations are provided below.

Section 129.101, General Provisions and Applicability

Subsection 129.101(a) states that sections 129.101–129.107 apply to each wood furniture manufacturing facility located in a Pennsylvania county located in the northeast ozone transport region or in a county classified as severe, serious, moderate or marginal nonattainment for ozone, and which emits or has the potential to emit (PTE) 25 tons or more per year of VOCs from wood furniture manufacturing operations. The most stringent VOC emission limits will apply to a wood furniture manufacturing operation that meets the applicable threshold limits for both section 129.52, relating to surface coating processes, and sections 129.101–129.107.

Subsection 129.101(b) requires the owner or operator of an existing wood furniture manufacturing facility subject to the conditions of subsection (a) above to comply with the requirements of the new regulations within one year from the effective date of the final rulemaking. This compliance deadline does not apply to facilities which have RACT determinations approved by EPA as SIP revisions prior to June 10, 2000.

Subsection 129.101(c) provides a compliance deadline for the owner or operator of an existing wood furniture manufacturing facility which increases its actual emissions or PTE to 25 tons per year or more of VOCs from wood furniture manufacturing operations to comply with this section and sections 129.102–129.107. Within one (1) year after increasing actual VOC emissions or the PTE to 25 tons per year or more, the owner or operator of the affected facility must comply with sections 129.101–129.107, except for those facilities which have RACT determinations

approved by EPA as SIP revisions prior to June 10, 2000.

Subsection 129.101(d) establishes a compliance date for existing facilities that install new sources. New sources installed at an existing facility must meet, at a minimum, the VOC emission standards of section 129.102 upon installation of the new source. This provision does not exempt a new source(s) installed at an existing facility from applicable new source review requirements.

Subsection 129.101(e) describes the interface between the existing surface coating requirements in section 129.52, Surface Coating Processes, and the presumptive RACT requirements for wood furniture manufacturing. If actual or potential VOC emissions would subject the facility to both sections 129.52 and 129.101–129.107, the owner or operator would only have to demonstrate compliance with the most stringent emissions limitations.

Subsection 129.101(f) describes the exemptions from the VOC emission limits in section 129.102. The limits in this section do not apply to a coating used exclusively for determining product quality and commercial acceptance, touch-up and repair, and other small quantity coatings, if the quantity of coating does not exceed 50 gallons per year for a single coating, and a total of 200 gallons per year for all coatings combined for the facility. The owner or operator of the facility must submit a written request to the Department which must be approved prior to the use of the coatings.

Section 129.102. Emission Standard

This section includes the emission limits of VOCs for wood furniture manufacturing sealers, topcoats, and strippable spray booth coatings that are actually used for coating the substrate, and the methodology for compliance.

Section 129.103. Work Practice Standards

This section establishes work practice standards to reduce VOC emissions from wood furniture manufacturing operations. The work practice standards include the development of a work practice implementation plan and operator training program, a leak inspection and maintenance plan, and a cleaning and wash-off solvent accounting system.

Subsection 129.103(a) requires the owner or operator of a facility subject to the requirements in sections 129.101–129.107 to develop and maintain a written work practice implementation plan no later than 60 days after the compliance date specified in section 129.101(b) or (c). The work practice implementation plan must include an operator training program, spray booth cleaning requirements, storage requirements, and application equipment requirements. The owner or operator of the facility must comply with each provision of the work practice implementation plan. The written plan must be available for inspection by the Department. If the Department determines that the work practice implementation plan does not adequately address the criteria specified in subsections 129.103(b)–(j), the owner or operator must revise the plan.

Subsection 129.103(b) describes the elements of the operator training program. A copy of the required operator training program must be maintained with the work practice implementation plan. All new and existing personnel, including contract personnel, who are involved in coating, cleaning or wash-off operations, or implementation of the requirements in sections 129.101–129.107, must complete the operator training program according to the dates specified in this subsection.

Subsection 129.103(c) lists the requirements for the leak inspection and maintenance plan including inspection schedules, inspection documentation methods, and repair and maintenance time frames.

Subsection 129.103(d) describes the requirements pertaining to the cleaning and wash-off solvent accounting system. A solvent accounting form must be developed for recording information pertaining to the solvents used in cleaning and wash-off operations.

Subsection 129.103(e) provides work practices for spray booth cleaning. The owners or operators of a facility may not use compounds containing more than 8.0 percent by weight of VOC for cleaning spray booth components other than conveyors, continuous coaters and their enclosures, or metal filters, unless the spray booth is being refurbished. When a spray booth is being refurbished, no more than one gallon of organic solvent can be used to prepare the booth prior to applying the new strippable booth coating. The strippable booth coating shall contain no more than 0.8 lb VOC/lb solids (0.8 kg VOC/kg solids), as applied.

Section 129.03(f) pertains to storage requirements. It requires the owner or operator of a facility to use normally closed containers for storing coating, cleaning and wash-off materials.

Subsection 129.103(g) describes the work practice standards for application equipment and limits the use of conventional air spray guns. The use of conventional air spray guns is prohibited if the conventional air spray guns are not used in accordance with the procedures in subsection 129.103(g)(1)–(6).

Subsection 129.103(h) describes the work practice standards used for line cleaning solvent. The solvent used for line cleaning must be pumped or drained into a normally closed container.

Subsection 129.103(i) describes the work practice standards for the solvent used to clean spray guns. The solvent used to clean spray guns must be collected into a normally closed container.

Subsection 129.103(j) describes the work practice standards for the control of emissions from wash-off operations. The emissions from wash-off operations must be controlled by using normally closed containers for the wash-off operations, and by tilting or rotating the part to drain as much of the solvent off as possible.

Section 129.104, Compliance Procedures and Monitoring Requirements

This section describes compliance procedures and monitoring requirements used to demonstrate compliance with the presumptive RACT regulations for wood furniture manufacturing operations. The owner or operator of a facility subject to the emission standards of section 129.102 must demonstrate compliance through the use of compliant coatings, add-on control devices, an emissions-averaging approach, or a combination of these compliance methods. When a combination of compliance options is selected, the owner or operator must demonstrate compliance with each applicable compliance technique.

Subsection 129.104(a) describes the methods and procedures an owner or operator of the facility must used to demonstrate compliance with the VOC emission standards in section 129.102 (relating to emission standards). The owner or operator must maintain a Certified Product Data Sheet (CPDS) for each coating that is subject to the VOC emission limits and maintain records which demonstrate that each coating, as applied, meets the applicable VOC emission limit. When a control system is used to meet the VOC emission limits, the overall control efficiency must be calculated using the equations in subsection 129.104(a)(2).

Subsection 129.104(b) describes the requirements for initial compliance.

Subsection 129.104(b)(1) requires the owners or operators of a facility demonstrating compliance through the

use of compliant coatings to submit an initial compliance status report in accordance with subsection 129.106(a) specifying whether compliant sealers, topcoats and strippable spray booth coatings are being used by the facility.

Subsection 129.104(b)(2) explains the initial compliance requirements for facilities using a continuous coater to apply sealers, topcoats, or both. To demonstrate initial compliance, the owners or operators are required to submit an initial compliance status report. The report must specify either that compliant sealers, topcoats, or both, as determined by the VOC content of the coating in the reservoir and as calculated from records, are being used, or that compliant sealers, topcoats, or both, as determined by the VOC content of the coating in the reservoir are being used, and the viscosity of the coating in the reservoir is being monitored.

Subsection 129.104(b)(3) requires users of control systems to include the operating parameter values to be monitored for the capture device, and the results of the initial performance testing, in the initial compliance report. The procedures and test methods must meet the requirements specified in Chapter 139 (relating to sampling and testing).

Subsection 129.104(b)(4) requires that an owner or operator of a facility subject to the work practice standards of section 129.103 submit an initial compliance status report as required by subsection 129.106(a).

Subsection 129.104(c) pertains to continuous compliance demonstrations, and requires the owner or operator of a facility subject to the presumptive RACT requirements to submit a compliance certification in writing to the Department with the semiannual report required under subsection 129.106(b).

Subsection 129.104(c)(1) requires facilities that use compliant coatings to demonstrate continuous compliance to maintain records and prove that the coatings used in their operations are compliant coatings. The compliance certification must also state that compliant sealers, topcoats, or both, and strippable spray booth coatings have been used each day in the semiannual reporting period and must identify the days of noncompliance and the reasons for noncompliance.

Subsection 129.104(c)(2) explains the continuous compliance requirements for facilities using continuous coaters to apply sealers, topcoats, or both. The compliance certification submitted to the Department must include a statement that compliant sealers, topcoats, or both have been used each day in the semiannual reporting period. If the facility has not been in continuous compliance, the certification must include the days of noncompliance, and the reason for noncompliance.

Subsection 129.104(c)(3) specifies the requirements for facilities that demonstrate continuous compliance by using a control system. Owners or operators of affected sources are required to install, calibrate, maintain and operate monitoring equipment that has been approved, in writing, by the Department. If the facility is using a control system that is not described in section 129.104, approval by the Department must be obtained prior to using the control system. The request for approval of the control system must include the following: a description of the system, test data verifying the performance of the system, the appropriate operating parameter values that will be monitored, and the monitoring device that will be used to demonstrate continuous compliance with the standard. The compliance certification for the control system must specify that the control system has not been operated at a daily average value greater than or less than (as appropriate) the operating parameter value for each day in the semiannual reporting period. If the operating parameter value is not in compliance, the certification must identify the days of noncompliance and the reason for noncompliance.

Subsection 129.104(c)(4) requires that each owner or operator of a facility that is subject to the work practice standards of section 129.103 demonstrate continuous compliance by following the work practice implementation plan. The compliance certification must state that the work practice implementation plan is being followed, or should otherwise identify the periods of noncompliance with the work practice standards and the reasons for noncompliance.

Subsection 129.104(d) requires compliance certifications to be signed by a responsible official of the company. In addition to the certification requirements of this section, the certification must state that based on information and inquiry, the statements and information in the document are true, accurate and complete.

Section 129.105, Record keeping Requirements

This section establishes record keeping requirements for wood furniture manufacturing operations. The owners or operators of affected facilities must keep adequate records to demonstrate compliance with the requirements in sections 129.101–129.107. The records must be maintained for at least 5 years. This section also includes specific record keeping requirements for facilities using compliant coatings, continuous coaters, control systems, or a combination of these methods. The record keeping requirements of subsections (a), (b), and (c) are to include the following:

(1) A certified product data for each coating and strippable spray booth coating.

(2) Records of the VOC content of the as applied coating. lbs VOC/lb solids (kg VOC/kg solids), of each coating and strippable spray booth coating, and copies of data sheets documenting how the as applied values were determined. Owners or operators applying sealers, topcoats or both, using continuous coaters must also keep records of solvent and coating additions to the continuous coater reservoir and viscosity measurements.

Subsection 129.105(d) prescribes additional record keeping requirements for control systems which include copies of the calculations to support the equivalency of using a control system and records of the daily average value of each continuously monitored parameter for each operating day. If all recorded values for a monitored parameter are within the range established during the initial performance test, the owner or operator may record that all values were within the range rather than calculating and recording an average for that day.

Subsection 129.105(e) specifies that a copy of the work practice implementation plan and all records associated with meeting the requirements of that plan must be maintained on site. The records kept for the work implementation plan must also satisfy the record keeping requirements for applicable provisions of the work practice implementation plan including the operator training program, the leak inspection and maintenance plan, the cleaning and wash-off solvent accounting system, and restrictions on the use of conventional air spray guns.

Subsection 129.105(f) requires the owner or operator of a facility that complies with section 129.103 or section 129.104(a)(1) to maintain a copy of the compliance certifications submitted in accordance with section 129.106(a) and the semiannual reports required by section 129.106(b).

Subsection 129.105(g) requires the owner or operator of a facility to maintain a copy of the other information submitted with the initial status report required under 129.106(a) and the semiannual reports required by section 129.106(b).

Section 129.106, Reporting Requirements

This section establishes reporting requirements for wood furniture manufacturing operations subject to the presumptive RACT requirements of sections 129.101–129.107.

Subsection 129.106(a) requires owners or operators of affected facilities to submit an initial compliance report to the Department no later than 60 days after the compliance date specified in section 129.101(b) and (c). The report must include the items required under section 129.104(b).

Subsection 129.106(b) requires the submittal of semiannual reports certifying compliance for the previous 6 months of wood furniture manufacturing operations. The first report should be submitted to the Department within 30 calendar days after the end of the first six-month period following the compliance date. Subsequent reports must be submitted within 30 calendar days after the end of each six-month period following the first report. Each semiannual report must include the information required by section 129.104(c) and (d), a statement of whether the facility was in compliance or noncompliance and, if the facility was in noncompliance, the measures taken to bring the facility into compliance.

Section 129.107, Special Provisions for Facilities Using an Emission Averaging Approach

This section allows the owners or operators of manufacturing operations to comply with the VOC emission limitations by averaging emissions across wood furniture finishing lines using the emissions averaging approach. The wood furniture manufacturing operation may use stains, basecoats, washcoats, sealers, and topcoats in any emissions averaging program that meets the equivalency requirements in section 129.51(a). The facility may use other coatings for its emissions averaging program if the averaging approach meets the equivalency requirements. The emissions averaging program submitted to the Department for approval prior to use must include a summary of the reasons why the facility would like to comply with the emission limitations through an equivalency determination using emissions averaging procedures. The program summary must also include an explanation of how averaging can be used to meet the emission limitations and a description of the types of coatings that will be included in the facility's emissions averaging program. An additional 10% reduction in emissions is required under subsection (b) for affected facilities using the emissions averaging approach.

Subsection 129.107(c) requires the owner or operator of the facility to submit a written summary to the Department explaining why the emissions averaging program should be used to demonstrate compliance. The written summary must also explain how emissions averaging can be used to meet the emissions limitations.

Subsection 129.107(d) requires the owner or operator of the facility to describe the types of coatings that will be included in the emissions averaging program. Coatings used in an averaging program may include basecoats, sealers, stains, topcoats, and washcoats. Coatings in the emissions averaging program cannot be applied using a continuous coater unless the amount of coating used is determined on a daily basis.

Subsection 129.107(e) specifies that the baseline for each coating included in the emissions averaging program shall be the lower of the actual or allowable emission rate as of the effective date of these regulations. The baseline emission rate for the facility may not be higher than what was presumed in the 1990 emissions inventory for the facility unless the Department has accounted for the increase in emissions as growth.

Subsection 129.107(f) provides that the quantification procedures used in the emissions averaging program must demonstrate that the facility's actual emissions are less than the allowable emissions.

Subsection 129.107(g) requires that the emissions averaging program submitted to the Department include monitoring, record keeping and reporting procedures that will allow Department inspectors or owners or operators of facilities using an averaging approach to determine the facility's compliance status on a daily basis. The monitoring, record keeping and reporting procedures must also include methods for determining required data when monitoring, record keeping and reporting violations result in missing, inadequate or erroneous monitoring and record keeping.

Chapter 139, Sampling and Testing, Subchapter A. Sampling and Testing Methods and Procedures—Revisions to Section 139.4, References, and 139.14, Emissions of VOCs

Section 139.4, References—The revisions to this section reflect the name change from the Pennsylvania Department of Environmental Resources to the Pennsylvania Department of Environmental Protection, and the name change from the Bureau of Air Quality Control to the Bureau of Air Quality.

Section 139.14, Emissions of VOCs—The amendments to this section require that the test methods and procedures for the content of total volatiles, solids and exempt solvents be equivalent to those listed in section 139.4(1), Standards of Performance for New Stationary Sources, and 139.4(5), Source Testing Manual.

C. Why Is EPA Approving These SIP Revisions?

Section 183(a) of the Clean Air Act (CAA) requires the EPA Administrator to issue control techniques guidelines (CTG)s for 11 categories of stationary sources of VOCs. On May 20, 1996, the EPA published a CTG document for control of VOCs from wood furniture finishing, cleaning and washoff operations (61 FR 25223 (May 20, 1996). This CTG established a ''presumptive norm'' RACT for the control of VOCs for wood furniture manufacturing facilities located in marginal, moderate, serious, and severe ozone nonattainment areas or ozone transport regions, that emit or have the PTE 25 tons per year or more of VOCs. The CTG and model rule for wood furniture manufacturing operations were developed by the EPA after reaching consensus among representatives from the environmental community, the wood furniture industry, and state permitting agencies. On September 27, 1996, EPA published an addendum to the CTG which specified dates for the adoption and implementation of the standards. EPA is approving the addition of sections 129.101–129.107, Wood Furniture Manufacturing Operations to 25 PA Code, Chapter 129 because this addition implements the Federal presumptive RACT requirements for wood furniture manufacturing operations established in EPA's CTG for wood furniture manufacturing operations as mandated by Section 182 of the CAA.

EPA is approving the additions, deletions, and revisions to definitions in Chapter 121, section 121.1, Definitions, because they are terms used in the substantive sections of Chapter 129 and satisfy all applicable Federal requirements and policies.

The revisions to section 129.52, relating to surface coating processes, are the fourth in a series of changes implementing the Commonwealth's Regulatory Basics Initiative (RBI) and Executive Order 1996–1. As part of the Commonwealth's RBI, the Pennsylvania DEP was tasked to review the Commonwealth's existing regulations and identify those that were more

stringent than Federal requirements, were obsolete, redundant, or no longer necessary. EPA is approving the revisions to section 129.52, Surface Coating Processes, because they clarify the existing requirements for surface coating processes.

The amendment to section 129.91, *Control of Major Sources of NO_X and VOCs* subsection (a) is approved since it will serve to clarify the relationship between the existing case-by-case RACT requirements and the newly adopted presumptive RACT requirements for wood furniture manufacturing operations.

The revisions to Chapter 139, sections 139.4 and 139.14 are approved since they were also identified during the Commonwealth's Regulatory Basics Initiative. As stated previously, the revision to section 139.4 corrects the name for the Department, and the revision to section 139.14 adds several applicable terms.

D. What Is the Process for EPA Approval of This Action?

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 18, 2001 without further notice unless EPA receives adverse comment by August 20, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Final Action

EPA is approving the revisions to the Commonwealth of Pennsylvania SIP submitted by the Pennsylvania DEP on October 4, 2000. The revisions amend Chapter 121, General Provisions, section 121.1, Definitions; Chapter 129, Standards for Sources, section 129.52, Surface Coating Processes; Chapter 129, Standards for Sources, section 129.91, Control of Major Sources of NO_X and VOCs, subsection (a); add sections 129.101–129.107, Wood Furniture Manufacturing Operations to Chapter 129, Standards for Sources; and amend Chapter 139, Sampling and Testing, sections 139.4 and 139.14. i

III. What Are the Administrative Requirements?

A. General 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 Fed. Reg. 28355 May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have 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), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule approving revisions to Pennsylvania's volatile organic compounds regulations, and the adoption of new regulations for wood furniture manufacturing operations does

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: July 5, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(152) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(152) Revisions to the Commonwealth of Pennsylvania Regulations pertaining to certain VOC regulations submitted on October 4, 2000 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of October 4, 2000 from the Pennsylvania Department of Environmental Protection transmitting the revisions to VOC regulations.

(B) Revisions to 25 PA Code, effective June 10, 2000.

(*1*) Additions, Deletions and Revisions to Chapter 121, General Provisions, section 121.1, Definitions.

(*2*) Revisions to Chapter 129, Standards for Sources, Sources of VOC, section 129.52, Surface Coating Processes.

(*3*) Revision to Chapter 129, Standards for Sources, section 129.91, Control of Major Sources of NO_X and VOCs, subsection (a).

(*4*) Addition to Chapter 129, Standards for Sources of sections 129.101–129.107, Wood Furniture Manufacturing Operations.

(*5*) Revisions to Chapter 139, Sampling and Testing, section 139.4, References, and section 139.14, Emissions of VOCs.

(ii) Additional Material.—Remainder of October 4, 2000 submittal.

[FR Doc. 01–18186 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD118–3073a; FRL–7014–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From Organic Chemical Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). These revisions establish reasonable available control technology (RACT) to limit volatile organic compound (VOC) emissions from organic chemical production. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on September 18, 2001 without further notice, unless EPA receives adverse written comment by August 20, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mail Code 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov* or Carol Febbo, (215) 814–2076, or by e-mail at *febbo.carol@epa.gov* or at the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On February 5, 2001, the State of Maryland submitted formal revisions to its SIP. These revisions, submitted by the Maryland Department of the Environment (MDE), consist of amendments to COMAR 26.11.19 *Volatile Organic Compounds from Specific Processes* to add a new regulation, COMAR 26.11.19.30 *Control of Volatile Organic Compounds from Organic Chemical Production.*

II. Summary of the SIP Revision

The Code of Maryland Regulations 26.11.19.30 *Control of Volatile Organic Compounds from Organic Chemical Production* establishes RACT to control VOCs from organic chemical production sources located throughout the State of Maryland. The subsections of the regulation are described below.

Subsections A. and B. Definitions and Terms Defined

These sections establish definitions for the terms ''back-up control device,'' ''chemical intermediate,'' ''control device,'' ''organic chemical production installation,'' and ''product condenser.''

Subsection C. Applicability

In general, the regulations apply to a person who owns or operates an organic chemical production installation at a premise that, on any day, has actual uncontrolled VOC emissions of 20 pounds or more per day. However, there are organic chemical production facilities to which COMAR 26.11.19.30 does not apply. It does not apply to an organic chemical production installation that is subject to provisions of the Federal Hazardous Organic NESHAPs (National Emission Standards for Hazardous Air Pollutants). See 40 CFR part 63, subparts F, G, H. Nor does it apply to any process or installation that is otherwise subject to regulations under COMAR 26.11.19 *Volatile Organic Compounds from Specific Processes* except for COMAR 26.11.19.01, 26.11.19 .02, and 26.11.19.16.

Subsection D. General Requirements

(1) A person who owns or operates an installation at a premise that has total uncontrolled VOC emissions of 100 pounds or more per day shall duct each process vent and exhaust line from any installation with actual emissions of 20 pounds or more per day, into a control device that has a VOC destruction or removal efficiency of at least 90 percent, overall.

(2) A person who owns or operates an installation at a premise that has total uncontrolled VOC emissions of 20 pounds or more per day but less than 100 pounds per day shall prepare a manual that identifies good operating practices and procedures designed to minimize VOC emissions from the premises.

(3) The good operating practices and procedures required in subsection D(2) shall be implemented by March 30, 2001, and the manual be made available to MDE upon request.

(4) A person who complies with subsection D(1) and later cannot achieve compliance because of an unavoidable outage or malfunction of the primary control device shall either:

(a) Discontinue operation until the primary control device is returned to proper service; or

(b) Use a back-up control device that is approved by MDE.

(5) The back-up control device under subsection D(4)(b) may not be used more than 10 percent of the annual operating time of the affected installation during any calendar year unless a longer period is approved by MDE.

Subsection E. Demonstration of Compliance

(1) Compliance shall be demonstrated using the applicable VOC test methods specified in COMAR 26.11.01.04C or other test method approved by MDE.

(2) A product condenser that is part of an organic chemical installation is not considered a control device.

EPA concurs with the MDE that COMAR 26.11.19.30 *Control of Volatile Organic Compounds from Organic Chemical Production* establishes RACT to control VOCs from organic chemical production sources located throughout the State of Maryland, and will result in significant enforceable VOC emission reductions. EPA has determined that COMAR 26.11.19.30 is approvable as a SIP revision.

III. Final Action

EPA is approving the SIP revisions submitted by MDE on February 5, 2001 to establish RACT to control VOC emissions from organic chemical production. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 18, 2001 without further notice unless EPA receives adverse comment by August 20, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. General 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 not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (see 66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have 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), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to revisions to the Maryland SIP establishing requirements for the control of VOC emissions from organic chemical production, must be filed in the United States Court of

Appeals for the appropriate circuit by September 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and record keeping requirements.

Dated: July 9, 2001.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(162) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(162) Revisions to the Maryland State Implementation Plan submitted on February 5, 2001 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) A letter dated February 5, 2001 from the Maryland Department of the Environment transmitting revisions to the Maryland State Implementation Plan, consisting of the addition of COMAR 26.11.19.30 *Control of Volatile Organic Compounds from Organic Chemical Production.*

(B) Addition of new COMAR 26.11.19.30 *Control of Volatile Organic Compounds from Organic Chemical Production,* adopted by the Secretary of the Environment on December 6, 2000 and effective on January 8, 2001, including the following:

(*1*) addition of new COMAR 26.11.19.30 A. Definitions.

(*2*) addition of new COMAR 26.11.19.30 B. Terms Defined.

(*3*) addition of new COMAR 26.11.19.30.C. Applicability.

(*4*) addition of new COMAR 26.11.19.30.D. General Requirements.

(*5*) addition of new COMAR 26.11.19.30.E. Demonstration of Compliance.

(ii) Additional Materials—Remainder of the February 5, 2001 submittal.

[FR Doc. 01–18190 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 130–1130a; FRL–7016–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) pertaining to the rescission of four area specific particulate matter process weight rate rules. Rescission of these rules, which have been replaced by one statewide rule, will simplify the SIP and ensure consistency between the Federally approved SIP and the state rules.

DATES: This direct final rule will be effective September 18, 2001 unless EPA receives adverse comments by August 20, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

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

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

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

What Is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this action?

Have the requirements for approval of a SIP revision been met?

What action is EPA taking?

What Is a SIP?

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

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

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

What Is the Federal Approval Process for a SIP?

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

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

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

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

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

What Is Being Addressed in This Document?

In an effort to simplify its state rules and to ensure statewide consistency, the state of Missouri has consolidated its four area specific particulate matter process weight rate rules into one, equivalent, statewide rule, 10 CSR 10–6.400, ''Restriction of Emission of Particulate Matter From Industrial Processes.'' We approved this statewide rule in the Missouri SIP on April 4, 2001 (65 FR 17811).

Since the area specific rules are now redundant, the state has requested that we rescind these rules from the Federally approved SIP. The rules being rescinded are:

- 10 CSR 10–2.030, Restriction of Emission of Particulate Matter From Industrial Processes
- 10 CSR 10–3.050, Restriction of Emission of Particulate Matter From Industrial Processes
- 10 CSR 10–4.030, Restriction of Emission of Particulate Matter From Industrial Processes
- 10 CSR 10–5.050, Restriction of Emission of Particulate Matter From Industrial Processes

These rules pertain to the Kansas City, out state, Springfield, and St. Louis areas, respectively.

Rescinding these rules from the SIP will simplify the SIP and ensure consistency between the state rules and the Federally approved SIP rules.

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

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

What Action Is EPA Taking?

We are processing this action as a direct final action because the revision makes a routine change to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

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. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP 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 a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 September 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 29, 2001.

William Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

§ 52.1320 [Amended]

2. In § 52.1320(c) the table is amended by:

e. Removing the entry under Chapter 2 for 10–2.030;

f. Removing the entry under Chapter 3 for 10–3.050;

g. Removing the entry under Chapter 4 for 10–4.030;

h. Removing the entry under Chapter 5 for 10–5.050.

[FR Doc. 01–18188 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 66, No. 140
Friday, July 20, 2001

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

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 00–075–1]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 2000 Millennial Plan Conference. These changes would keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 18, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–075–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–075–1.

You may read any comments that we receive on this docket 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. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (NPIP, also referred to below as ''the Plan'') is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all plan programs is voluntary, but flocks, hatcheries, and dealers must qualify as ''U.S. Pullorum-Typhoid Clean'' before participating in any other Plan program. Also, the regulations in 9 CFR part 82, subpart C, which provide for certain testing, restrictions on movement, and other restrictions on certain chickens, eggs, and other articles due to the presence of *Salmonella enteritidis,* prohibit hatching eggs or newly hatched chicks from egg-type chicken breeding flocks from being moved interstate unless they are classified ''U.S. S. Enteritidis Monitored'' under the Plan or have met equivalent requirements for *S. enteritidis* control, in accordance with 9 CFR 145.23(d), under official supervision.

The Plan identifies States, flocks, hatcheries, and dealers that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145 and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS or the Service) of the U.S. Department of Agriculture (USDA or the Department) amends these provisions from time to time to incorporate new scientific information and technologies within the Plan.

The proposed amendments discussed in this document are consistent with the recommendations approved by the voting delegates to the National Plan Conference that was held from June 29 to July 1, 2000. Participants in the 2000 National Plan Conferences represented flockowners, breeders, hatcherymen, and Official State Agencies from all cooperating States. The proposed amendments are discussed in greater detail below.

Discussion

Definitions

We are proposing to add a new definition to § 145.1. We would define *public exhibition* as ''a public show of poultry.'' The regulations in §§ 145.23(b)(3)(vii), 145.33(b)(3)(vii), and 145.53(b)(3)(vii) require that all poultry, including exhibition, exotic, and game birds, but excluding waterfowl, going to public exhibition either come from U.S. Pullorum-Typhoid Clean or equivalent flocks or have a negative pullorum-typhoid test within 90 days prior to going to public exhibition. Given the presence of that requirement in the regulations, the voting delegates at the 2000 Plan Conference believed it would be useful to define what is meant by the term ''public exhibition.''

Debarment Procedures

We are proposing to make two changes to § 145.13, ''Debarment from participation.'' First, we would amend the first sentence of the section to provide that the notice given by the Official State Agency to a Plan participant of apparent noncompliance would be in writing. The section currently calls for participants to be notified of their apparent noncompliance; requiring that notice to be in writing would serve to establish a record that the notification had indeed been provided. Second, § 145.13 currently refers to ''§§ 50.21 through 50.28–14 and §§ 50.30 through 50.33 of the rules of practice in 7 CFR part 50.'' In 1995, 7 CFR part 50 was revised and the sections cited in § 145.13 were redesignated; therefore, we are proposing to remove the specific section citations mentioned in the previous sentence and replace them with a reference to 7 CFR part 50.

Authorized Laboratories

We are also proposing to add a new paragraph (e) to § 145.2 to make it clear that the Plan's authorized laboratories will follow the laboratory protocols outlined in part 147 when determining the status of a participating flock with respect to an official Plan classification. While there may be alternative tests available in some cases for Plan diseases, we believe that it is necessary for the purposes of consistency within the Plan, and to maintain the credibility of the Plan's programs, to explicitly require the use of the official tests described in part 147 when determining the status of a flock with respect to an official Plan classification.

Hatcheries

Paragraph (a) of § 145.6 contains minimum requirements with respect to sanitation practices in participating hatcheries. Those provisions were established in 1971 and have been amended once, in 1984. To bring the provisions of § 145.6 up to date, we are proposing to revise that paragraph as follows:

- Egg room walls, ceilings, floors, air filters, drains, and humidifiers should be cleaned and disinfected at least two times per week. Cleaning and disinfection procedures should be as outlined in § 147.24.
- Incubator room walls, ceilings, floors, doors, fan grills, vents, and ducts should be cleaned and disinfected after each set or transfer. Incubator rooms should not be used for storage. Plenums should be cleaned at least weekly. Egg trays and buggies should be cleaned and disinfected after each transfer. Cleaning and disinfection procedures should be as outlined in § 147.24.
- Hatcher walls, ceilings, floors, doors, fans, vents, and ducts should be cleaned and disinfected after each hatch. Hatcher rooms should be cleaned and disinfected after each hatch and should not be used for storage. Plenums should be cleaned after each hatch. Cleaning and disinfection procedures should be as outlined in § 147.24.
- Chick/poult processing equipment and rooms should be thoroughly cleaned and disinfected after each hatch. Chick/poult boxes should be cleaned and disinfected before being reused. Vaccination equipment should be cleaned and disinfected after each use. Cleaning and disinfection procedures should be as outlined in § 147.24.
- Hatchery residue, such as chick/poult down, eggshells, infertile eggs, and dead germs, should be disposed of promptly and in a manner satisfactory to the Official State Agency.
- The entire hatchery should be kept in a neat, orderly condition and cleaned and disinfected after each hatch.
- Effective insect and rodent control programs should be implemented.

The procedures and practices described above are routinely observed in the industry today and are considered to be essential to the maintenance of proper hatchery sanitation. Our proposed changes, therefore, would bring the provisions of the Plan in line with the current practices observed throughout the industry.

Blood Testing

Section 145.14, ''Blood testing,'' currently states, among other things, that ostrich, emu, rhea, and cassowary candidates for official Plan classifications must be blood tested when at least 12 months of age or upon reaching sexual maturity, depending on the species and at the discretion of the Official State Agency. In this document, we are proposing to amend that provision to state that ostrich, emu, rhea, and cassowary candidates are to be blood tested when more than 12 months of age. This proposed change would make the blood testing provisions for ostrich, emu, rhea, and cassowary candidates consistent with the provisions for other species of birds in § 145.14 by simply providing the minimum age at which the birds may be tested. As ostriches, emus, rheas, and cassowaries typically reach sexual maturity somewhere between 18 months to 3 years of age, depending on the species, this proposed change would not prevent an Official State Agency from taking sexual maturity into account when determining the appropriate testing age.

Also in § 145.14, we would amend footnote 1 in § 145.14(a) to provide the current address of the APHIS staff that can provide the criteria and procedures for Department approval of antigens and reagents. That staff has been relocated from Riverdale, MD, to Ames, IA.

Paragraph (a)(9)(ii) of § 145.14 requires that serum samples that produce positive reactions for pullorum-typhoid on the microagglutination test be retested at an authorized laboratory in accordance with the microagglutination test procedures set forth in § 147.5. If the reaction to the retest is positive in dilutions of 1:40 or greater, additional examination must be performed on the bird from which the serum sample was drawn and its flock. The procedures for the microagglutination test found in § 147.5, however, refer to the use of a 1:20 dilution for the microagglutination test, not the 1:40 dilution cited in § 145.14. It is the 1:40 dilution that is correct; therefore, we are proposing to amend paragraphs (c) and (d) of § 147.5 so that they refer to the correct dilution. This proposed change would also necessitate amending § 147.5(d)(2) to replace a reference to 10-microliter serum sample with a reference to a 5-microliter serum sample.

U.S. S. Enteritidis Clean, Egg-Type Chickens

We are proposing to amend § 145.23(d) to change the name of the program described in that paragraph from ''U.S. S. Enteritidis Monitored'' to ''U.S. S. Enteritidis Clean.'' Virtually all of the egg-type chicken breeders in the Plan participate in the current U.S. S. Enteritidis Monitored program, and the incidence of *Salmonella enteritidis* (SE) in their flocks is extremely low. Because the monitoring and prevention elements of this program have been so effective, the program has become oriented more toward maintaining the freedom of flocks from SE. Our proposed change to the name of the program would reflect this new focus and provide a measure of credit to the flockowners who have been integral to the program's success. As part of this proposed change, we would remove the illustrative design for the U.S. S. Enteritidis Monitored classification in § 145.10(l), as that design would no longer be necessary. A reference to § 145.23(d) would be added to § 145.10(m), which contains the illustrative design for the current U.S. S. Enteritidis Clean classification for meat-type chickens.

Within § 145.23(d), paragraph (d)(iv) calls for participating flocks to be maintained in compliance with §§ 147.21, 147.24(a), and 147.26, which relate to flock sanitation and good management practices. In this document, we are proposing to amend § 145.23(d)(iv) to also state that rodents and other pests should be effectively controlled. Rodents have been found to be a reservoir of *Salmonella,* particularly SE, so reducing or eliminating the presence of rodents and other pests from areas where flocks are kept would help to maintain the flocks' freedom from *Salmonella.*

Paragraph (d)(vi) of § 145.23 currently provides that a federally licensed SE bacterin may be used in multiplier breeding flocks that have been bacteriologically examined and found negative for SE. Because some *Salmonella* vaccines may cause positive reactions to pullorum-typhoid tests administered to a flock, we are proposing to amend § 145.23(d)(vi) to allow flockowners to delay vaccination until after the flock has been tested for

pullorum-typhoid testing as described in § 145.23(d)(1)(vii). We would retain the current option of keeping a sample of 350 birds unvaccinated until the flock reaches 4 months of age and has been tested in accordance with § 145.23(d)(1)(vii) and found negative. We would, however, amend that option to specify that the birds in the flock must have been vaccinated using an injectable bacterin or live vaccine that does not spread. Currently, the regulations in § 145.23(d)(vi) do not differentiate between the use of vaccines or bacterins that may spread to other birds and those that do not.

U.S. M. Gallisepticum Clean, Meat-Type Chickens

The regulations in § 145.33(c)(2) currently require participants handling U.S. M. Gallisepticum Clean products (i.e., poultry breeding stock, hatching eggs, baby poultry, and started poultry) to keep those products separate from other products that are not classified U.S. M. Gallisepticum Clean. While that paragraph directs that the products be kept separate, it offers no specific guidance as to how that should be accomplished. In this document, we are proposing to amend § 145.33(c)(2) to state that the necessary separation can be achieved through the use of separate hatchers and incubators, separate hatch days, and the hatchery sanitation and biosecurity procedures detailed in §§ 147.22, 147.23, and 147.24. The steps taken by the Plan participant would be subject to the review and approval of the Official State Agency to ensure that they are being implemented in a manner that adequately protects the integrity of the M. Gallisepticum Clean products.

U.S. S. Enteritidis Clean, Meat-Type Chickens

Paragraph (h)(1)(i) of § 145.33 provides, in part, that a meat-type chicken breeding flock may be eligible for the U.S. S. Enteritidis Clean classification if the flock originated from a U.S. S. Enteritidis Clean flock or if meconium from the chicks in the flock and a sample of chicks that died within 7 days after hatching have been examined bacteriologically for SE at an authorized laboratory and any group D *Salmonella* samples have been serotyped. We are proposing to amend those criteria that pertain to eligibility based on testing to state that a flock may be eligible if any one of the following samples has been examined bacteriologically for SE at an authorized laboratory and any group D *Salmonella* samples have been serotyped:

- A 25-gram sample of meconium from the chicks in the flock collected and cultured as described in proposed § 147.12(a)(5) (current § 147.18—the proposed redesignation of this section is discussed later in this document); or
- A sample of chick papers collected and cultured as described in § 147.12(c); or
- A sample of 10 chicks that died within 7 days after hatching.

These proposed changes would clarify the provisions of § 145.33 (h)(1)(i) by specifying the size of the meconium sample that must be collected and cultured and the number of dead chicks that must be examined and by providing a reference to the applicable meconium collection and culturing procedures found in existing § 147.18 (which, as noted above and discussed later in this document, we would redesignate as § 147.12(a)(5)). This proposed change would also provide for the use of chick paper culturing conducted in accordance with existing § 147.12(c) as an additional means of qualifying a flock for the U.S. S. Enteritidis Clean classification. We believe that any one of these three methods would provide an accurate assessment of the SE status of a flock seeking to qualify for this classification.

In addition to the proposed changes described above, we are also proposing to make several other changes to the provisions regarding the U.S. S. Enteritidis Clean classification for meat-type chickens. First, the introductory text of § 145.33(h) currently states, in part, that the classification is intended for primary meat-type breeders. (A *primary breeding flock* is currently defined in § 145.1 as ''[a] flock composed of one or more generations that is maintained for the purpose of establishing, continuing, or improving parent lines.'') As we believe that this classification could be beneficial and feasible in any meat-type chicken breeding flock, and not just primary breeding flocks, we would remove the word ''primary'' from the introductory text of § 145.33(h).

Second, § 145.33(h)(1)(iv) currently provides that environmental samples must be collected by an Authorized Agent (i.e., a person designated by the Official State Agency). In order to allow others to assist the Authorized Agent and thus reduce the time required for the collection of samples in some cases, we are proposing to amend § 145.33(h)(1)(iv) to provide that the environmental samples may also be collected under the supervision of an Authorized Agent.

Third, § 145.33(h)(1)(vi) currently provides that hatching eggs produced by a flock must be collected as quickly as possible, handled as described in § 147.22, and sanitized or fumigated. In this document, we are proposing to remove the reference to sanitizing and fumigation, as § 147.22 already describes hatching egg sanitation procedures and standard industry practice no longer includes fumigation of hatching eggs.

Finally, § 145.33(h)(3) currently provides that 25 randomly selected live birds from the flock must be bacteriologically examined for SE as described in § 147.11 if SE is isolated from an environmental sample collected from the flock. In this document, we are proposing to add the option of examining 500 cloacal swabs collected in accordance with existing § 147.12(a)(2) in addition to, or in place of, the examination of 25 live birds. The regulations currently provide for the use of cloacal swab examination in other situations, and we believe that this procedure would provide Plan participants with an effective primary or supplemental means of assessing the SE status of a flock following the isolation of SE in an environmental sample.

Rules of Practice

Sections 145.24, 145.34, 145.44, and 145.54 all currently provide conditions that must be met for a State to attain ''clean State'' status under specific Plan disease classifications. There are currently a total of nine separate ''clean State'' classifications (one in § 145.24, two in § 145.34, five in § 145.44, and one in § 145.54). In each case, the regulations provide that the Service will revoke a State's ''clean State'' classification if any of the prescribed conditions are discontinued, but will not do so until it has conducted an investigation and the Official State Agency has been given an opportunity for a hearing. In only two of the nine cases—i.e., § 145.44(d)(2) and (e)(2)—do the regulations specify that the hearing will be held in accordance with rules of practice adopted by the Administrator. Because the adoption of rules of practice by the Administrator is necessary in all cases prior to such administrative hearings, we are proposing to amend §§ 145.24, 145.34, 145.44, and 145.54 to specify that hearings regarding the revocation of a State's ''clean State'' classification will be held in accordance with rules of practice adopted by the Administrator.

U.S. Approved

Under § 145.53(a), a breeding flock may be classified as U.S. Approved if all birds in the flock observed by Authorized Agents or State Inspectors are found to conform with the criteria for the breed represented, as contained

in the Standard of Perfection published by the American Poultry Association, Inc. (APA) or the breeder's specifications for the stock represented in the flock, and such specifications are on file with the Official State Agency. It takes a great deal of training to become an official APA judge for the various waterfowl, exhibition poultry, and game bird breeds represented in the Plan, and most State NPIP organizations do not have people trained in those standards of perfection. The U.S. Approved classification has already been removed from provisions regarding the classification of egg-type chicken breeding flocks (§ 145.23), meat-type chicken breeding flocks (§ 145.33), and turkey breeding flocks (§ 145.43). Given that it appears that there is no longer the necessary support in place to maintain the U.S. Approved classification for waterfowl, exhibition poultry, and game bird breeding flocks, we are proposing to remove the U.S. Approved classification from § 145.53. As part of this proposed change, we would also remove the illustrative design for the U.S. Approved classification from § 145.10(a), as there would no longer be a corresponding classification for the design in the provisions of the Plan.

Testing for Antibodies to Avian Mycoplasma

Paragraph (e)(2) of § 147.7 provides a procedure to test for antibodies to avian mycoplasma by hemagglutination inhibition (HI). The test uses the constant antigen, titered-sera method for measuring antibodies to *M. gallisepticum, M. synoviae,* or *M. meleagridis.* The second-to-last and last sentences of § 147.7(e)(2)(ii)(B) currently state ''[t]he desired endpoint is 4 HA [i.e., hemagglutination] units. The well containing the 1:4 dilution should give a complete HA while the 1:8 dilution should show less than complete HA.'' These two sentences appear to have been included in error, as they apply to the HA titer of the diluted antigen used in the test, and not to the HA titer of the stock antigen, which is the focus of the step being described. The dilution of the stock antigen is described in the paragraph that follows, i.e., § 147.7(e)(2)(ii)(C). Therefore, because they do not apply to the step being described, we are proposing to remove the final two sentences of § 147.7(e)(2)(ii)(B).

Bacteriological Examination of Salmonella

Paragraph (a) of § 147.11 describes the laboratory procedure recommended for the bacteriological examination of *Salmonella* in egg- and meat-type chickens, waterfowl, exhibition poultry, and game birds. In this document, we are proposing to amend those procedures by:

- Restricting the scope of the paragraph to the examination of cultures collected from birds (and modifying illustration 1 accordingly) and moving the provisions of current § 147.11(a) relating to the examination of environmental cultures, including illustration 2, to § 147.12;
- Removing the recommended non-selective enrichment step;
- Increasing the sample size of pullorum-typhoid reactor birds from ''at least four birds'' to ''up to 25 birds;''
- Modifying sample collection and pooling recommendations;
- Offering specific suggestions for plating media; and
- Recommending delayed secondary enrichment in cases where the initial selective enrichment procedure yields negative results.

These proposed changes, which have been incorporated into the revised procedure set forth in revised § 147.11(a) at the end of this document, were recommended by the NPIP's Salmonella Technical Committee and are intended to provide a more effective and scientifically valid procedure for the identification of *Salmonella* in egg- and meat-type chickens, waterfowl, exhibition poultry, and game birds. As part of this proposed change, we would also update the literature citation contained in footnote 7 to § 147.11(a)(1) so that it refers to the most recent edition of the publication cited.

Collection, Isolation, and Identification of Salmonella

Section 147.12 currently describes procedures for collecting environmental samples and cloacal swabs for bacteriological examination. In this document, we are proposing to expand the scope of that section to include procedures for collection, isolation, and identification of *Salmonella* from environmental samples, cloacal swabs, chick box papers, and meconium samples, and we would revise the title of the section to reflect this broader scope.

The procedure for sampling in broth found in § 147.12(a)(1)(i) currently states that authorized laboratories will provide capped tubes containing Hajna or Mueller-Kauffmann tetrathionate brilliant green sterile enrichment broth for each sample. Because other types of sterile enrichment broth are now available, we are proposing to remove the reference to Hajna or Mueller-Kauffmann tetrathionate brilliant green enrichment broths in order to provide for the use by authorized laboratories of other appropriate sterile enrichment broths.

The provisions regarding the use of drag swabs found in § 147.12(a)(3) currently refer to exposing gauze pads to the surface of floor litter and nest box areas and provide instructions for the assembly of drag swabs using gauze pads. Commercially made sponges designed for use in drag swabs are now available, so we are proposing to amend the introductory text of § 147.12(a)(3) to provide for the use of either gauze pads or commercially available sponges as a component of a drag swab sampler.

Paragraph (a)(3)(iv) of § 147.12 describes the procedure for collecting samples from nest boxes. The sampling procedure described in that paragraph entails wiping down assorted locations in about 10 percent of the total nesting area, then sealing the sample in a sterile bag for submission to an authorized laboratory. We have determined that this procedure could also be used for collecting samples from an egg belt, which is another environment from which *Salmonella* could be isolated. Therefore, we are proposing to amend § 147.12(a)(3)(iv) to provide for the use of the described sampling technique on both nest boxes and egg belts.

Paragraph (c) of § 147.12 provides instructions for collecting samples from chick box papers. We are proposing to move the provisions of § 147.12(c) to § 147.12(a)(4) in order to place it among the other provisions of § 147.12 regarding the collection of samples. In moving those provisions, we would also add to the introductory text of the paragraph a reminder to Plan participants that it is important that the paper be removed from the chick box before the box is placed in the brooding house. This would help to maintain the integrity of the sample taken from the chick box papers by preventing the potential introduction of contaminants from the brooding house. We would also add a new paragraph (a)(4)(iii) that would provide that the laboratory to which the collected samples or chick box papers are sent must follow the procedure set forth in proposed § 147.12(a)(5) (current § 147.18) for testing chick meconium for *Salmonella.*

As noted earlier in this document in the discussion of the proposed changes to § 147.11, we are proposing to move the provisions of § 147.11(a) regarding the examination of environmental cultures, including illustration 2, into § 147.12; those provisions would become new § 147.12(b). In addition, we are also proposing to move the provisions of current § 147.18, which provides a procedure for testing chick

meconium for *Salmonella,* into § 147.12 as new paragraph (a)(5). We believe that this proposed relocation of those provisions would result in the regulations becoming more focused, with § 147.11 concentrating on procedures for culturing pullorum-typhoid reactors and birds from SE-positive environments and § 147.12 concentrating on procedures for culturing environmental samples, chick papers, and meconium. As a result of these proposed moves, it would be necessary for § 147.12(a)(5)(vi) (current § 147.18(f)) to direct that the processing of suspect *Salmonella* colonies from chick meconium samples be conducted in accordance with § 147.12(b), rather than § 147.11.

Proposed new § 147.12(b) would provide two different enrichment procedures, i.e., tetrathionate enrichment with delayed secondary enrichment and pre-enrichment followed by selective enrichment. These culturing procedures for environmental and other samples, which have been drawn from the combined bird/environment culturing procedures found in current § 147.11(a), are set forth in proposed § 147.12(b) at the end of this document. Illustration 2, which would be revised to reflect the more specific procedures, would be placed at the end of the new paragraph.

Hatching Egg and Hatchery Sanitation

We are proposing to revise § 147.22, ''Hatching egg sanitation,'' to reflect changes in industry practice and update the language used in the section. The revised section would reflect the discontinuance of egg fumigation as a routine measure and would include a recommendation for cleaning and disinfecting vehicles used for transporting eggs and chicks or poults, but would otherwise not differ substantively from existing § 147.22.

Similarly, we are also proposing to revise § 147.23, ''Hatchery sanitation,'' to reflect changes in industry practice and update the language used in the section. As is the case with our proposed revision of § 147.22, revised § 147.23 would reflect the discontinuance of egg fumigation as a routine measure. This revised section would also recommend the use of new chick papers, in addition to clean or new boxes, for the distribution of day-old chicks, poults, or other newly hatched poultry. Otherwise, revised § 147.23 would not differ substantively from existing § 147.23.

Cleaning and Disinfecting

We are proposing to update § 147.24, which describes recommended procedures for cleaning and disinfecting structures and equipment used by Plan participants. We would reorganize the provisions of the section so that paragraph (a) would deal with poultry houses, paragraph (b) with hatchers and hatchery rooms, and paragraph (c) with delivery trucks and their drivers and helpers. In each paragraph, we would expand upon the recommendations provided in current § 147.24 in order to provide more specific guidance regarding cleaning and disinfection procedures. Specifically, in § 147.24(a), we would revise paragraph (a)(1) to recommend the following:

- Remove all live ''escaped'' and dead birds from the building;
- Blow dust from equipment and other exposed surfaces;
- Empty the residual feed from the feed system and feed pans and remove it from the building;
- Disassemble feeding equipment and dump and scrape as needed to remove any and all feed cake and residue. Clean up spilled feed around the tank and clean out the tank; and
- Rinse down and wash out the inside of the feed tank to decontaminate the surfaces and allow to dry.

We would also amend paragraph (a)(3) to include recommendations for washing down the entire inside surfaces of the building and all the installed equipment such as curtains, ventilation ducts and openings, fans, fan housings and shutters, feeding equipment, watering equipment, etc., and using high pressure and high volume water spray to soak into and remove the dirt to decontaminate the building.

We would amend paragraph (b) to recommend the use of cleaning agents and sanitizers that are registered by the U.S. Environmental Protection Agency as germicidal, fungicidal, pseudomonocidal, and tuberculocidal. We would also recommend:

- Removing loose organic debris by sweeping, scraping, vacuuming, brushing, or scrubbing, or by hosing surfaces with high pressure water;
- Using hot water (at least 140 °F) for cleaning hatching trays and chick separator equipment;
- Using a cleaner/sanitizer that can penetrate protein and fatty deposits and allowing the chemical to cling to treated surfaces at least 10 minutes before rinsing off, then manually scrubbing any remaining deposits of organic material until they are removed; and
- Applying disinfectant to the cleaned walls and using a clean and sanitized squeegee to remove excess water, working down from ceilings to walls to floors and being careful not to recontaminate cleaned areas.

Because current paragraph (c) applies to the cleaning of hatchery equipment, we would move that paragraph into paragraph (b), which, as noted above, applies to the cleaning and disinfection of hatchers and hatchery rooms.

Finally, we would establish a new paragraph (c), which would provide recommendations regarding the disinfection of delivery trucks and biosecurity practices for truck drivers and their helpers. Specifically, we would recommend that truck tires be thoroughly sprayed with disinfectant before the truck leaves the main road and enters the farm driveway, and that drivers and helpers observe the following practices:

- Put on sturdy, disposable plastic boots or clean rubber boots before getting out of the truck cab. Put on a clean smock or coveralls and a hairnet before entering the poultry house.
- After loading eggs or unloading chicks/poults, remove the dirty smock/coveralls and place in a plastic garbage bag before loading in the truck. Be sure to keep clean coveralls separate from dirty ones.
- Reenter the cab of the truck and remove boots before placing feet onto floorboards. Remove hairnet and leave with disposable boots on farm.
- Sanitize hands using appropriate hand sanitizer.
- Return to the hatchery or go to the next farm and repeat the process.

These proposed amendments to § 147.24, which were recommended by the NPIP Cleaning and Disinfection Technical Committee, would serve to reinforce the existing provisions of the section and thus increase the effectiveness of the cleaning and disinfection measures applied to poultry houses, hatchers and hatchery rooms, and delivery trucks and the biosecurity practices observed by personnel entering the farm, thus reducing the risk that participating flocks and products would be exposed to disease.

Fumigation

Section 147.25 currently refers to fumigation as ''an essential part of a sanitation program.'' As noted previously, fumigation is no longer used routinely within the poultry industry. Therefore, we are proposing to amend § 147.25 so that the section simply states that fumigation may be used for sanitizing eggs and hatchery equipment or rooms as part of a sanitation program, thus deemphasizing the role of fumigation.

Isolation, Sanitation, and Good Management Practices

Section 147.26 describes procedures for establishing isolation and maintaining sanitation and good management practices for the control of *Salmonella* and *Mycoplasma* infections. In this document, we are proposing to amend § 147.26 as follows:

- We would amend paragraph (a)(1) to specify that the conditions under which visitors may be allowed must minimize the introduction of *Salmonella* and *Mycoplasma,* and not simply ''insure sanitation'' as currently provided.
- We would combine paragraphs (a)(2) and (a)(3), which require breeder farms to be kept free of market birds and other domesticated fowl, respectively.
- We would amend the requirement in paragraph (a)(4) that requires dead birds to be disposed of by burning, deep burial, or burial in special disposal pits. Because some of those methods may be prohibited in some areas, we would amend that requirement to simply state that dead birds are to be disposed of by locally approved methods.
- We would amend paragraph (b)(5) to require that a rodent control program be established. That paragraph currently requires only that the rodent population and other pests be kept in control without requiring an active program for that purpose.

These proposed changes were recommended by a committee of scientists appointed to review § 147.26 by the Plan's General Conference Committee and would serve to update the provisions of that section.

General Conference Committee

Paragraph (b) of § 147.43 describes the procedures for the nomination and election of regional committee members to serve on the General Conference Committee (GCC). In order to broaden the pool of potential nominees, we are proposing to amend § 147.43(b) to add provisions for the solicitation of nominees. Under these proposed provisions, the process for soliciting nominations for regional committee members would include, but not be limited to:

- Advertisements in at least two industry journals, such as the newsletters of the American Association of Avian Pathologists, the National Chicken Council, the United Egg Producers, and the National Turkey Federation;
- A **Federal Register** announcement; and
- Special inquiries for nominations from universities or colleges with minority/disability enrollments and faculty members in poultry science or veterinary science.

Further, in order to promote a more diverse pool of nominees, we would require that at least one nominee from each region be from an underrepresented group, e.g., minorities, women, or persons with disabilities. These proposed changes are intended to increase awareness of GCC membership opportunities by providing for the active solicitation of nominations from industry, scientific, and university or college groups.

Miscellaneous

In addition to the proposed changes described above, we are also proposing to make several nonsubstantive editorial changes to improve clarity and correct erroneous citations to several sections within the regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The proposed changes contained in this document are based on the recommendations of representatives of member States, hatcheries, dealers, flockowners, and breeders who took part in the Plan's 2000 National Plan Conference. The proposed changes would amend the Plan and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 2000 National Plan Conference. These changes would keep the provisions of the plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

The plan serves as a ''seal of approval'' for eggs and poultry producers in the sense that tests and procedures recommended by the Plan are considered optimal for the industry. In all cases, the changes proposed in this document have been generated by the industry itself with the goal of reducing disease risk and increasing product marketability. Because participation in the plan is voluntary, individuals are likely to remain in the program as long as the costs of implementing the program are lower than the added benefits they receive from the program.

The proposed changes contained in this document generally either update testing procedures and sanitation guidelines or revise NPIP's administrative operations, with the aim of better safeguarding the health of the Nation's poultry industry. The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. We do not expect that the changes proposed in this document would result in significant economic effects on small entities.

The Small Business Administration defines size standards for industries using the North American Industry Classification System (NAICS). Under this system, a firm classified within ''Chicken Egg Production'' (NAICS code 112310) is considered small if its annual receipts are $9 million or less. For firms classified within ''Broilers and Other Meat Type Chicken Production'' (NAICS code 112320), the small-entity criterion is annual receipts of $750,000 or less.

The egg and poultry industries are highly integrated vertically, with most production owned or under contract to large-scale processing and marketing firms.[1] For example, broilers for Tyson Foods, the world's largest producer, came in 1999 from 6,060 farms (98 percent under contract), and its eggs came from breeder flocks on 1,388 farms.[2]

In 1997, an average of 303,604,000 egg-producing layers produced 77,532 million eggs.[3] The number of egg-producing farms and their size distribution is not known, but it is reasonable to assume that some of them may be small entities, operating either independently or under contract.

Also in 1997, there were 13,458 farms that sold layers, pullets, and pullet chicks, and 23,937 farms that sold broilers and other meat-type chickens.[4] Regarding the latter, a farm would need to produce about 275,000 broilers a year in order to reach annual sales of at least $500,000, according to Census of Agriculture and other National Agricultural Statistics Service (NASS)

[1] The broiler industry, in particular, is heavily concentrated. Tyson Foods had weekly sales of ready-to-cook chicken that averaged 154.3 million pounds in 1999. The 10 largest broiler companies accounted for 429.6 million pounds per week in 1999, approximately half of the Nation's production (WATT PoultyUSA, January 2000).

[2] WATT Poultry USA, January 2000.

[3] ''Chickens and Eggs, Final Estimates 1994–97,'' USDA/NASS, December 1998.''

[4] 1997 Census of Agriculture.

data.[5] By this measure, about one-half of broiler farms can be considered small.[6]

Clearly, some of the poultry and egg-producing farms that would be affected by this proposed rule are small. However, the procedural and administrative changes proposed are not expected to have a significant economic impact on any entities, either large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 145 and 147 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for part 145 would be revised to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.4.

2. In § 145.1, a definition of *public exhibition* would be added, in alphabetical order, to read as follows:

§ 145.1 Definitions.

* * * * *

Public exhibition. A public show of poultry.

* * * * *

3. In § 145.2, a new paragraph (e) would be added to read as follows:

§ 145.2 Administration.

* * * * *

(e) An authorized laboratory of the National Poultry Improvement Plan will follow the laboratory protocols outlined in part 147 of this chapter when determining the status of a participating flock with respect to an official Plan classification.

* * * * *

4. Section 145.6 would be amended as follows:

a. By revising paragraph (a).

b. In paragraph (b), by removing the word ''which'' and adding the word ''that'' in its place.

c. In paragraph (c), by removing the word ''shall'' and adding the word ''should'' in its place.

d. In paragraph (d), in both the first and second sentences, by removing the word ''shall'' and adding the word ''should'' in its place.

§ 145.6 Specific provisions for participating hatcheries.

(a) Hatcheries must be kept in sanitary condition, acceptable to the Official State Agency. The procedures outlined in §§ 147.22 through 147.25 of this chapter will be considered as a guide in determining compliance with this provision. The minimum requirements with respect to sanitation include the following:

(1) Egg room walls, ceilings, floors, air filters, drains, and humidifiers should be cleaned and disinfected at least two times per week. Cleaning and disinfection procedures should be as outlined in § 147.24 of this chapter.

(2) Incubator room walls, ceilings, floors, doors, fan grills, vents, and ducts should be cleaned and disinfected after each set or transfer. Incubator rooms should not be used for storage. Plenums should be cleaned at least weekly. Egg trays and buggies should be cleaned and disinfected after each transfer. Cleaning and disinfection procedures should be as outlined in § 147.24 of this chapter.

(3) Hatcher walls, ceilings, floors, doors, fans, vents, and ducts should be cleaned and disinfected after each hatch. Hatcher rooms should be cleaned and disinfected after each hatch and should not be used for storage. Plenums should be cleaned after each hatch. Cleaning and disinfection procedures should be as outlined in § 147.24 of this chapter.

(4) Chick/poult processing equipment and rooms should be thoroughly cleaned and disinfected after each hatch. Chick/poult boxes should be cleaned and disinfected before being reused. Vaccination equipment should be cleaned and disinfected after each use. Cleaning and disinfection procedures should be as outlined in § 147.24 of this chapter.

(5) Hatchery residue, such as chick/poult down, eggshells, infertile eggs, and dead germs, should be disposed of promptly and in a manner satisfactory to the Official State Agency.

(6) The entire hatchery should be kept in a neat, orderly condition and cleaned and disinfected after each hatch.

(7) Effective insect and rodent control programs should be implemented.

* * * * *

§ 145.10 [Amended]

5. In § 145.10, paragraphs (a) and (l) would be removed and reserved and paragraph (m) would be amended by adding the words ''§ 145.23(d) and'' immediately after the word ''See'' .

§ 145.13 [Amended]

6. In § 145.13, the introductory text of the section would be amended as follows:

a. In the first sentence, by adding the words ''in writing'' immediately after the words ''are notified''.

b. In the sixth sentence, by removing the words ''§§ 50.21 through 50.28–14 and §§ 50.30 through 50.33 of''.

c. In the seventh sentence, by removing the citation ''7 CFR 50.2(e),(g),(h), and (l)'' and adding the citation ''7 CFR 50.10'' in its place.

7. Section 145.14 would be amended as follows:

a. In the introductory text of the section, by revising the first sentence.

b. In paragraph (a)(1), footnote 1, by removing the words ''Veterinary Biologics, 4700 River Road, Unit 148, Riverdale, Maryland 20737–1237'' and adding the words ''Center for Veterinary Biologics, 510 South 17th Street, Suite 104, Ames IA 50010–8197'' in their place.

§ 145.14 Blood testing.

Poultry must be more than 4 months of age when blood tested for an official classification: *Provided,* That turkey candidates under subpart D of this part may be blood tested at more than 12 weeks of age; game bird candidates under subpart E of this part may be blood tested when more than 4 months of age or upon reaching sexual maturity, whichever comes first; and ostrich, emu, rhea, and cassowary candidates under subpart F of this part may be blood

[5] In 1997, the average liveweight equivalent price of broiler was $0.377 per pound, and the average weght was 4.835 pounds. Thus, the average price received per broiler was $1.82.

[6] The 1997 Censur of Agriculture indicates that 52 percent of broiler-producing farms sold at lest 200,000 broilers.

tested when more than 12 months of age. * * *

* * * * *

8. Section 145.23, would be amended as follows:

a. In paragraph (d), by revising the introductory text.

b. In paragraph (d)(1)(i), by removing the word ''Monitored'' and adding the word ''Clean'' in its place.

c. By revising paragraphs (d)(1)(iv) and (d)(1)(vi).

§ 145.23 Terminology and classification; flocks and products.

* * * * *

(d) *U.S. S. Enteritidis Clean.* This classification is intended for egg-type breeders wishing to assure their customers that the hatching eggs and chicks produced are certified free of *Salmonella enteritidis*.

(1) * * *

* * * * *

(iv) The flock is maintained in compliance with §§ 147.21, 147.24(a), and 147.26 of this chapter. Rodents and other pests should be effectively controlled;

* * * * *

(vi) If a *Salmonella* vaccine is used that causes positive reactions with pullorum-typhoid antigen, one of the following options must be utilized:

(A) Administer the vaccine after the pullorum-typhoid testing is done as described in paragraph (d)(1)(vii) of this section.

(B) If an injectable bacterin or live vaccine that does not spread is used, keep a sample of 350 birds unvaccinated and banded for identification until the flock reaches at least 4 months of age. Following negative serological and bacteriological examinations as described in paragraph (d)(1)(vii) of this section, vaccinate the banded, non-vaccinated birds.

* * * * *

§ 145.24 [Amended]

9. In § 145.24, paragraph (a)(2), at the end of the last sentence, the words ''in accordance with rules of practice adopted by the Administrator'' would be added immediately after the word ''hearing''.

10. Section 145.33 would be amended as follows:

a. By revising paragraph (c)(2).

b. In paragraph (h), the introductory text, by removing the word ''primary''.

c. By revising paragraph (h)(1)(i).

d. In paragraph (h)(1)(iv), by adding the words ''or under the supervision of'' immediately after the word ''by''.

e. By revising paragraph (h)(1)(vi).

f. In paragraph (h)(3), the first sentence, by removing the word ''in'' immediately before the words ''paragraph (h)(1)(iv)'' and by adding the words ''and/or 500 cloacal swabs collected in accordance with § 147.12(a)(2) of this chapter'' immediately before the word ''must''.

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(2) A participant handling U.S. M. Gallisepticum Clean products must keep these products separate from other products through the use of separate hatchers and incubators, separate hatch days, and proper hatchery sanitation and biosecurity (see §§ 147.22, 147.23, and 147.24) in a manner satisfactory to the Official State Agency: *Provided,* That U.S. M. Gallisepticum Clean chicks from primary breeding flocks must be produced in incubators and hatchers in which only eggs from flocks qualified under paragraph (c)(1)(i) of this section are set.

* * * * *

(h) * * *

(1) * * *

(i) The flock originated from a U.S. S. Enteritidis Clean flock, or one of the following samples has been examined bacteriologically for *S. enteritidis* at an authorized laboratory and any group D *Salmonella* samples have been serotyped:

(A) A 25-gram sample of meconium from the chicks in the flock collected and cultured as described in § 147.12(a)(5) of this chapter; or

(B) A sample of chick papers collected and cultured as described in § 147.12(c) of this chapter; or

(C) A sample of 10 chicks that died within 7 days after hatching.

* * * * *

(vi) Hatching eggs produced by the flock are collected as quickly as possible and are handled as described in § 147.22 of this chapter.

* * * * *

§ 145.34 [Amended]

11. In § 145.34, paragraphs (a)(2) and (b)(2) would each be amended by adding the words ''in accordance with rules of practice adopted by the Administrator'' immediately after the word ''hearing''.

§ 145.44 [Amended]

12. In § 145.44, paragraphs (a)(2), (b)(2), and (c)(2) would be each amended by adding the words ''in accordance with rules of practice adopted by the Administrator'' immediately after the word ''hearing''.

§ 145.53 [Amended]

13. In § 145.53, paragraph (a) would be removed and reserved.

§ 145.54 [Amended]

14. In § 145.54, paragraph (a)(2) would be amended by adding the words ''in accordance with rules of practice adopted by the Administrator'' immediately after the word ''hearing''.

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

15. The authority citation for part 147 would be revised to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.4.

§ 147.5 [Amended]

16. Section 147.5 would be amended as follows:

a. In paragraph (c), by removing the numbers ''1:20'' and adding the numbers ''1:40'' in their place.

b. In paragraph (d), the introductory text, by removing the numbers ''1:20'' and adding the numbers ''1:40'' in their place.

c. In paragraph (d)(2), by removing the words ''10 microliters (0.01 cc.)'' and adding the words ''5 microliters (0.005 cc.)'' in their place.

§ 147.7 [Amended]

17. In § 147.7, paragraph (e)(2)(ii)(B) would be amended by removing the third and fourth sentences.

18. In § 147.11, paragraph (a) would be revised to read as follows:

§ 147.11 Laboratory procedure recommended for the bacteriological examination of Salmonella.

(a) *For egg-and meat-type chickens, waterfowl, exhibition poultry, and game birds.* All reactors to the Pullorum-Typhoid tests, up to 25 birds, and birds from *Salmonella enteritidis* (SE) positive environments should be cultured in accordance with both the direct (paragraph (a)(1)of this section) and selective enrichment (paragraph (a)(2) of this section) procedures described in this section. Careful aseptic technique should be used when collecting all tissue samples.

(1) Direct culture (refer to illustration 1 to this section). Grossly normal or diseased liver, heart, pericardial sac, spleen, lung, kidney, peritoneum, gallbladder, oviduct, misshapen ova or testes, inflamed or unabsorbed yolk sac, and other visibly pathological tissues where purulent, necrotic, or proliferative lesions are seen (including cysts, abscesses, hypopyon, and inflamed serosal surfaces) should be sampled for direct culture using either

flamed wire loops or sterile swabs. Since some strains may not dependably survive and grow in certain selective media, inoculate non-selective plates (such as blood or nutrient agar) and selective plates (such as MacConkey [MAC] and brilliant green novobiocin [BGN] for pullorum-typhoid and MAC, BGN, and xylose-lysine-tergitol 4 [XLT 4] for SE). After inoculating the plates, pool the swabs from the various organs into a tube of non-selective broth (such as nutrient or brain-heart infusion). Refer to illustration 1 for recommended bacteriological recovery and identification procedures.[7] Proceed immediately with collection of organs and tissues for selective enrichment culture.

(2) Selective enrichment culture (refer to illustration 1 to this section). Collect and culture organ samples separately from intestinal samples, with intestinal tissues collected last to prevent cross-contamination. Samples from the following organs or sites should be collected for culture in selective enrichment broth:

(i) Heart (apex, pericardial sac, and contents if present);

(ii) Liver (portions exhibiting lesions or, in grossly normal organs, the drained gallbladder and adjacent liver tissues);

(iii) Ovary-Testes (entire inactive ovary or testes, but if ovary is active, include any atypical ova);

(iv) Oviduct (if active, include any debris and dehydrated ova);

(v) Kidneys and spleen; and

(vi) Other visibly pathological sites where purulent, necrotic, or proliferative lesions are seen.

(3) From each bird, aseptically collect 10 to 15 grams of each organ or site listed in paragraph (a)(2) of this section. Mince, grind, or blend and place in a sterile plastic bag. All the organs or sites listed in paragraph (a)(2) of this section from the same bird may be pooled into one bag. Do not pool samples from more than one bird. Add sufficient tetrathionate enrichment broth to give a 1:10 (sample to enrichment) ratio. Follow the procedure outlined in illustration 1 for the isolation and identification of *Salmonella.*

(4) From each bird, aseptically collect 10 to 15 grams of each of the following parts of the digestive tract: Crop wall, duodenum, jejunum (including remnant of yolk sac), both ceca, cecal tonsils, and rectum-cloaca. Mince, grind, or blend tissues and pool them into a sterile plastic bag. Do not pool tissues from different birds into the same sample. Add sufficient tetrathionate enrichment broth to give a 1:10 (sample to enrichment) ratio. Follow the procedure outlined in illustration 1 for the isolation and identification of *Salmonella.*

(5) After selective enrichment, inoculate selective plates (such as MAC and BGN for pullorum-typhoid and MAC, BGN, and XLT 4) for SE. Inoculate three to five *Salmonella*-suspect colonies from plates into triple sugar iron (TSI) and lysine iron agar (LIA) slants. Screen colonies by serological (i.e., serogroup) and biochemical procedures (e.g., the Analytical Profile Index for Enterobacteriaceae [API]) as shown in illustration 1. As a supplement to screening three to five *Salmonella*-suspect colonies on TSI and LIA slants, a group D colony lift assay may be utilized to signal the presence of hard-to-detect group D *Salmonella* colonies on agar plates.

(6) If the initial selective enrichment is negative for *Salmonella,* a delayed secondary enrichment (DSE) procedure is used. Leave the tetrathionate-enriched sample at room temperature for 5 to 7 days. Transfer 1 mL of the culture into 10 mL of fresh tetrathionate enrichment broth, incubate at 37 °C for 20 to 24 hours, and plate as before.

(7) Serogroup all isolates identified as salmonellae and serotype all serogroup D1 isolates. Phage-type all SE isolates.

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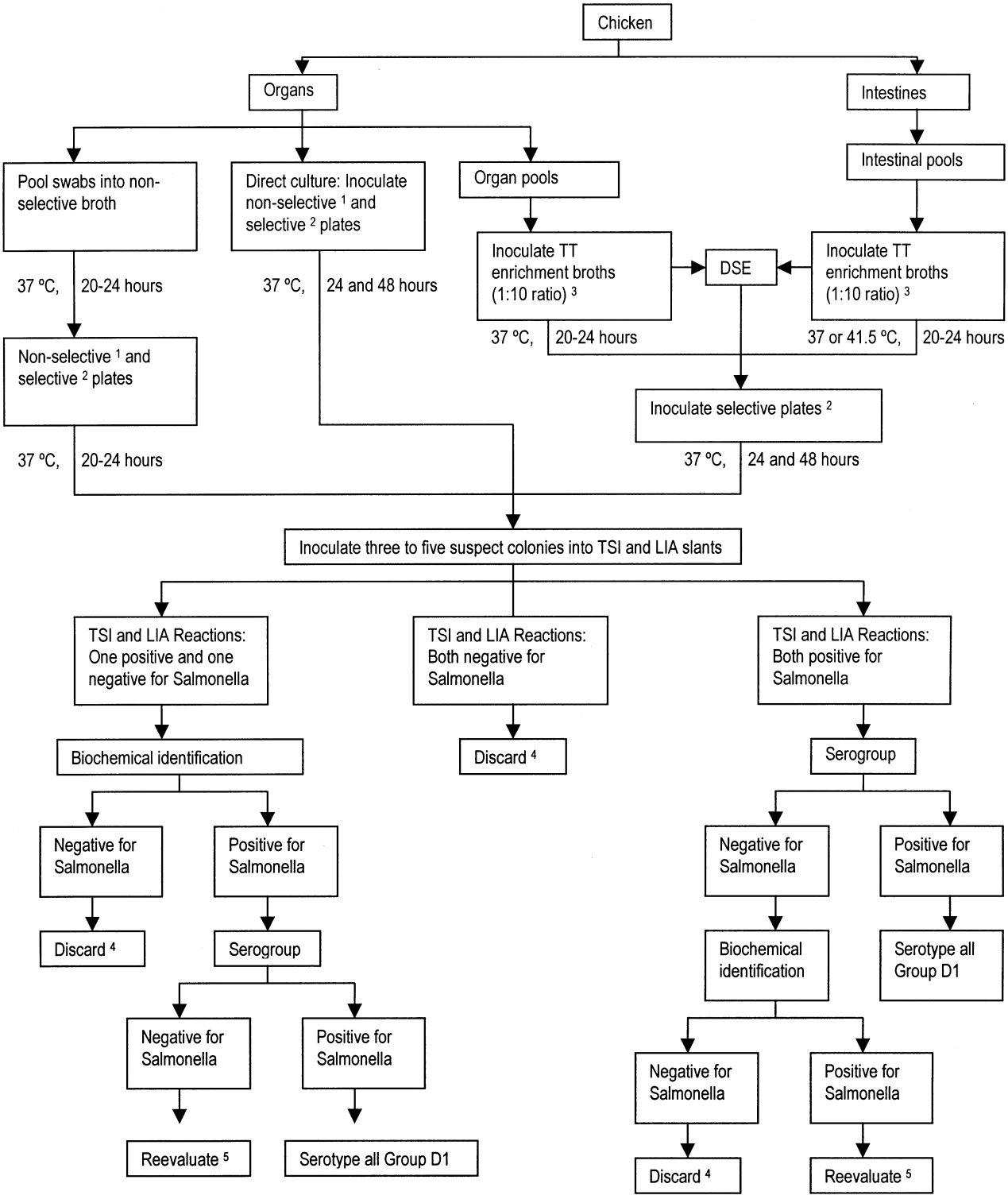
[7] Biochemical identification charts may be obtained from ''A Laboratory Manual for the Isolation and Identification of Avian Pathogens,'' chapter 2, Salmonellosis. Fourth edition, 1998, American Association of Avian Pathologists, Inc., Kennett Square, PA 19348.

Illustration 1.—Procedure for culturing Pullorum-Typhoid reactors and birds from SE-positive environments.



1. Non-selective plates such as blood or nutrient agar.
2. Selective plates such as MacConkey, Brilliant Green Novobiocin (BGN) for pullorum-typhoid reactors and MacConkey, BGN, and xylose-lysine tergitol 4 (XLT 4) for SE.
3. Tetrathionate enrichment broth.
4. Reevaluate if epidemiologic, necropsy, or other information indicates the presence of an unusual strain of Salmonella.
5. If biochemical identification and serogroup procedures are inconclusive, restreak original colony onto non-selective plating media to check for purity. Repeat biochemical and serology tests.

* * * * *

19. Section 147.12 would be amended as follows:

a. By revising the section heading.

b. In paragraph (a), the introductory text, by removing the word ''shall'' and adding the word ''should'' in its place.

c. In paragraph (a)(1)(i), by removing the words ''(Hajna or Mueller-Kauffmann Tetrathionate Brilliant Green)''.

d. In paragraph (a)(3), the introductory text, by adding the words ''(or commercially available sponges designed for this purpose)'' immediately before the words '', a key component''.

e. In paragraph (a)(3)(ii), by removing the words ''paragraph (a)(1)'' and adding the words ''paragraph (a)(3)(i)'' in their place.

f. In paragraph (a)(3)(iv), by revising the first two sentences.

g. By adding new paragraphs (a)(4) and (a)(5).

h. By removing paragraph (c), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b).

§ 147.12 Procedures for collection, isolation, and identification of Salmonella from environmental samples, cloacal swabs, chick box papers, and meconium samples.

* * * * *

(a) * * *

(3) * * *

(iv) Nest box or egg belt sampling technique. Collect nest box or egg belt samples by using two 3-by-3 inch sterile gauze pads premoistened with double-strength skim milk and wiping the pads over assorted locations in about 10 percent of the total nesting area or the egg belt. * * *

* * * * *

(4) *Chick box papers.* Samples from chick box papers may be bacteriologically examined for the presence of *Salmonella.* The Plan participant may collect the samples in accordance with paragraph (a)(4)(i) of this section or submit chick box papers directly to a laboratory in accordance with paragraph (a)(4)(ii) of this section. It is important that the paper be removed from the chick box before the box is placed in the brooding house.

(i) Instructions for collecting samples from chick box papers:

(A) Collect 1 chick box paper for each 10 boxes of chicks placed in a house and lay the papers on a clean surface.

(B) Clean your hands and put on latex gloves. Do not apply disinfectant to the gloves. Change gloves after collecting samples from 10 chick box papers or any time a glove is torn.

(C) Saturate a sterile 3-by-3 inch gauze pad with double-strength skim milk (see footnote 12 to this section) and rub the pad across the surface of five chick box papers. Rub the pad over at least 75 percent of each paper and use sufficient pressure to rub any dry meconium off the paper. Pouring a small amount of double-strength skim milk (1 to 2 tablespoons) on each paper will make it easier to collect samples.

(D) After collecting samples from 10 chick box papers, place the two gauze pads used to collect the samples (i.e., one pad per 5 chick box papers) into an 18 oz. Whirl-Pak bag and add 1 to 2 tablespoons of double-strength skim milk.

(E) Promptly refrigerate the Whirl-Pak bags containing the samples and transport them, on ice or otherwise refrigerated, to a laboratory within 48 hours of collection. The samples may be frozen for longer storage if the Plan participant is unable to transport them to a laboratory within 48 hours.

(ii) The Plan participant may send chick box papers directly to a laboratory, where samples may be collected as described in paragraph (a)(4)(i) of this section. To send chick box papers directly to a laboratory:

(A) Collect 1 chick box paper for each 10 boxes of chicks placed in a house and place the chick papers immediately into large plastic bags and seal the bags.

(B) Place the plastic bags containing the chick box papers in a clean box and transport them within 48 hours to a laboratory. The plastic bags do not require refrigeration.

(iii) The laboratory must follow the procedure set forth in paragraph (a)(5) of this section for testing chick meconium for *Salmonella.*

(5) *Chick meconium testing procedure for Salmonella.*

(i) Record the date, source, and flock destination on the ''Meconium Worksheet.''

(ii) Shake each plastic bag of meconium until a uniform consistency is achieved.

(iii) Transfer a 25 gm sample of meconium to a sterile container. Add 225 mL of a preenrichment broth to each sample (this is a 1:10 dilution), mix gently, and incubate at 37 °C for 18–24 hours.

(iv) Enrich the sample with selective enrichment broth for 24 hours at 42 °C.

(v) Streak the enriched sample onto brilliant green novobiocin (BGN) agar and xylose-lysine-tergitol 4 (XLT4) agar.

(vi) Incubate both plates at 37 °C for 24 hours and process suspect *Salmonella* colonies according to paragraph (b) of this section.

(b) *Isolation and identification of Salmonella.* Either of the two enrichment procedures in this paragraph may be used.

(1) Tetathionate enrichment with delayed secondary enrichment (DSE):

(i) Add tetrathionate enrichment broth to the sample to give a 1:10 (sample to enrichment) ratio. Incubate the sample at 37 or 41.5 °C for 20 to 24 hours as shown in illustration 2.

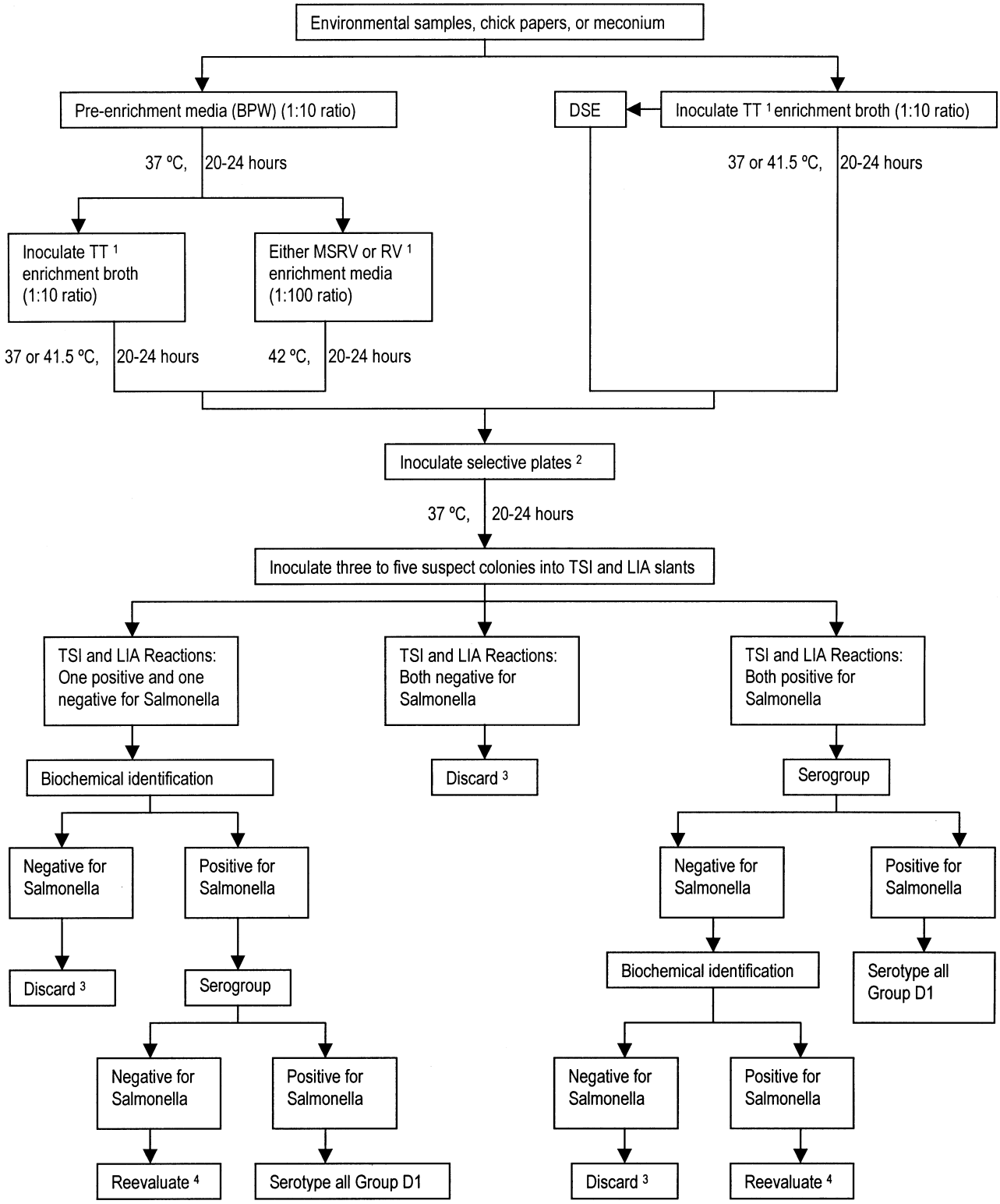
(ii) After selective enrichment, inoculate selective plates (such as BGN and XLT4). Incubate the plates at 37 °C for 20 to 24 hours. Inoculate three to five *Salmonella*-suspect colonies from the plates into triple sugar iron (TSI) and lysine iron agar (LIA) slants. Incubate the slants at 37 °C for 20 to 24 hours. Screen colonies by serological (i.e., serogroup) and biochemical (*e.g.,* API) procedures as shown in illustration 2. As a supplement to screening three to five *Salmonella*-suspect colonies on TSI and LIA slants, a group D colony lift assay may be utilized to signal the presence of hard-to-detect group D *Salmonella* colonies on agar plates.

(iii) If the initial selective enrichment is negative for *Salmonella,* use a DSE procedure. Leave the original tetrathionate-enriched sample at room temperature for 5 to 7 days. Transfer 1 mL of the culture into 10mL of fresh tetrathionate enrichment broth, incubate at 37 °C for 20 to 24 hours, and plate as in paragraph (b)(1)(ii) of this section.

(iv) Serogroup all isolates identified as *Salmonella* and serotype all serogroup D isolates. Phage-type all *Salmonella enteritidis* isolates.

(2) Pre-enrichment followed by selective enrichment. (See illustration 2.)

Illustration 2.—Culture procedures for environmental samples, chick papers, or meconium.



1. Tetrathionate enrichment broth, e.g., Rappaport-Vassiliades (RV) or modified semisolid RV (MSRV).
2. Selective plates such as brilliant Green Novobiocin (BGN) or xylose-lysine tergitol 4 (XLT4).
3. Reevaluate if epidemiologic, necropsy, or other information indicates the presence of an unusual strain of Salmonella.
4. If biochemical identification and serogroup procedures are inconclusive, restreak original colony onto non-selective plating media to check for purity. Repeat biochemical and serology tests.

* * * * *

§ 147.18 [Removed]

20. Section 147.18 would be removed.

21. Section 147.22 would be revised to read as follows:

§ 147.22 Hatching egg sanitation.

Hatching eggs should be collected from the nests at frequent intervals and, to aid in the prevention of contamination with disease-causing organisms, the following practices should be observed:

(a) Cleaned and disinfected containers, such as egg flats, should be used in collecting the nest eggs for hatching. Egg handlers should thoroughly wash their hands with soap and water prior to and after egg collection. Clean outer garments should be worn.

(b) Dirty eggs should not be used for hatching purposes and should be collected in a separate container from the nest eggs. Slightly soiled nest eggs may be gently dry cleaned by hand.

(c) Hatching eggs should be stored in a designated egg room under conditions that will minimize egg sweating. The egg room walls, ceiling, floor, door, heater, and humidifier should be cleaned and disinfected after every egg pickup. Cleaning and disinfection procedures should be as outlined in § 147.24.

(d) The egg processing area should be cleaned and disinfected daily.

(e) Effective rodent and insect control programs should be implemented.

(f) The egg processing building or area should be designed, located, and constructed of such materials as to assure that proper egg sanitation procedures can be carried out, and that the building itself can be easily, effectively, and routinely sanitized.

(g) All vehicles used for transporting eggs or chicks/poults should be cleaned and disinfected after use. Cleaning and disinfection procedures should be as outlined in § 147.24.

22. Section 147.23 would be revised to read as follows:

§ 147.23 Hatchery sanitation.

An effective program for the prevention and control of Salmonella and other infections should include the following measures:

(a) An effective hatchery sanitation program should be designed and implemented.

(b) The hatchery building should be arranged so that separate rooms are provided for each of the four operations: Egg receiving, incubation and hatching, chick/poult processing, and egg tray and hatching basket washing. Traffic and airflow patterns in the hatchery should be from clean areas to dirty areas (i.e., from egg room to chick/poult processing rooms) and should avoid tracking from dirty areas back into clean areas.

(c) The hatchery rooms, and tables, racks, and other equipment in them should be thoroughly cleaned and disinfected frequently. All hatchery wastes and offal should be burned or otherwise properly disposed of, and the containers used to remove such materials should be cleaned and sanitized after each use.

(d) The hatching compartments of incubators, including the hatching trays, should be thoroughly cleaned and disinfected after each hatch.

(e) Only clean eggs should be used for hatching purposes.

(f) Only new or cleaned and disinfected egg cases should be used for transportation of hatching eggs. Soiled egg case fillers should be destroyed.

(g) Day-old chicks, poults, or other newly hatched poultry should be distributed in clean, new boxes and new chick papers. All crates and vehicles used for transporting birds should be cleaned and disinfected after each use.

23. Section 147.24 would be amended as follows:

a. In paragraph (a), the introductory text, by removing the words '', hatchery rooms and delivery trucks''.

b. By revising paragraphs (a)(1) and (a)(3).

c. In paragraph (b), the introductory text, by adding the words ''and hatchery rooms'' immediately after the word ''hatchers''.

d. By revising paragraph (b)(1).

e. In paragraph (b)(3), by removing the word ''sanitized'' and adding the word ''disinfected'' in its place.

f. By redesignating paragraph (c) as paragraph (b)(4) and adding a new paragraph (c).

§ 147.24 Cleaning and disinfecting.

* * * * *

(a) * * *

(1) Remove all live ''escaped'' and dead birds from the building. Blow dust from equipment and other exposed surfaces. Empty the residual feed from the feed system and feed pans and remove it from the building. Disassemble feeding equipment and dump and scrape as needed to remove any and all feed cake and residue. Clean up spilled feed around the tank and clean out the tank. Rinse down and wash out the inside of the feed tank to decontaminate the surfaces and allow to dry.

* * * * *

(3) Wash down the entire inside surfaces of the building and all the installed equipment such as curtains, ventilation ducts and openings, fans, fan housings and shutters, feeding equipment, watering equipment, etc. Use high pressure and high volume water spray (for example 200 pounds per square inch and 10 gallons per minute or more) to soak into and remove the dirt to decontaminate the building. Scrub the walls, floors, and equipment with a hot soapy water solution. Rinse to remove soap.

* * * * *

(b) * * *

(1) Use cleaning agents and sanitizers that are registered by the U.S. Environmental Protection Agency as germicidal, fungicidal, pseudomonocidal, and tuberculocidal. Use manufacturer's recommended dilution. Remove loose organic debris by sweeping, scraping, vacuuming, brushing, or scrubbing, or by hosing surface with high pressure water (for example 200 pounds per square inch and 10 gallons per minute or more). Remove trays and all controls and fans for separate cleaning. Use hot water (minimum water temperature of 140 °F) for cleaning hatching trays and chick separator equipment. Thoroughly wet the ceiling, walls, and floors with a stream of water, then scrub with a hard bristle brush. Use a cleaner/sanitizer that can penetrate protein and fatty deposits. Allow the chemical to cling to treated surfaces at least 10 minutes before rinsing off. Manually scrub any remaining deposits of organic material until they are removed. Rinse until there is no longer any deposit on the walls, particularly near the fan opening, and apply disinfectant. Use a clean and sanitized squeegee to remove excess water, working down from ceilings to walls to floors and being careful not to recontaminate cleaned areas.

* * * * *

(c) The egg and chick/poult delivery truck drivers and helpers should use the following good biosecurity practices while picking up eggs or delivering chicks/poults:

(1) Spray truck tires thoroughly with disinfectant before leaving the main road and entering the farm driveway.

(2) Put on sturdy, disposable plastic boots or clean rubber boots before getting out of the truck cab. Put on a clean smock or coveralls and a hairnet before entering the poultry house.

(3) After loading eggs or unloading chicks/poults, remove the dirty smock/coveralls and place into plastic garbage bag before loading in the truck. Be sure to keep clean coveralls separate from dirty ones.

(4) Reenter the cab of the truck and remove boots before placing feet onto floorboards. Remove hairnet and leave with disposable boots on farm.

(5) Sanitize hands using appropriate hand sanitizer.

(6) Return to the hatchery or go to the next farm and repeat the process.

§ 147.25 [Amended]

24. Section 147.25 would be amended by removing the words ''as an essential'' and adding the words ''or rooms as a'' in their place.

25. Section 147.26 would be amended as follows:

a. By revising paragraph (a).

b. In paragraph (b)(5), by removing the word ''Keep'' and adding the words ''Establish a rodent control program to keep'' in its place.

c. By removing paragraph (b)(10) and redesignating paragraphs (b)(11) through (b)(15) as paragraphs (b)(10) through (b)(14), respectively.

§ 147.26 Procedures for establishing isolation and maintaining sanitation and good management practices for the control of Salmonella and Mycoplasma infections.

(a) The following procedures are required for participation under the U.S. Sanitation Monitored, U.S. M. Gallisepticum Clean, U.S. M. Synoviae Clean, U.S. S. Enteritidis Monitored, and U.S. S. Enteritidis Clean classifications:

(1) Allow no visitors except under controlled conditions to minimize the introduction of *Salmonella* and *Mycoplasma*. Such conditions must be approved by the Official State Agency and the Service;

(2) Maintain breeder flocks on farms free from market birds and other domesticated fowl. Follow proper isolation procedures as approved by the Official State Agency;

(3) Dispose of all dead birds by locally approved methods.

* * * * *

26. In § 147.43, paragraph (b) would be revised to read as follows:

§ 147.43 General Conference Committee.

* * * * *

(b) The regional committee members and their alternates will be elected by the official delegates of their respective regions, and the member-at-large will be elected by all official delegates. There must be at least two nominees for each position, the voting will be by secret ballot, and the results will be recorded. At least one nominee from each region must be from an underrepresented group (minorities, women, or persons with disabilities). The process for soliciting nominations for regional committee members will include, but not be limited to: Advertisements in at least two industry journals, such as the newsletters of the American Association of Avian Pathologists, the National Chicken Council, the United Egg Producers, and the National Turkey Federation; a **Federal Register** announcement; and special inquiries for nominations from universities or colleges with minority/disability enrollments and faculty members in poultry science or veterinary science.

* * * * *

Done in Washington, DC, this 11th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17805 Filed 7–19–01; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038–AB73

Listing Standards and Conditions for Trading Security Futures Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') proposes Rules 41.21 through 41.25 under the Commodity Exchange Act (''CEA'').[1] These proposed rules relate to new statutory provisions enacted by the Commodity Futures Modernization Act of 2000 (''CFMA'')[2] that specify listing standards and conditions for trading of security futures products. These proposed rules also establish requirements related to the reporting of data, trading halts, position limits, and special provisions relating to contract design of cash-settled security futures products and the physical delivery of security futures products.

DATES: Comments must be received on or before August 20, 2001.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to 202–418–5521, or by e-mail to secretary@cftc.gov. Reference should be made to ''Listing Standards and Conditions for Security Futures.''

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Acting Director, Division of Economic Analysis; Thomas M. Leahy, Jr., Financial Instruments Unit Chief, Division of Economic Analysis; or Gabrielle A. Sudik, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, D.C. 20581. Telephone: 202–418–5000. E-mail: (RShilts@cftc.gov), (TLeahy@cftc.gov), or (GSudik@cftc.gov).

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission today proposes for public comment new rules 41.21 through 41.25 under part 41, 17 CFR part 41, under the Commodity Exchange Act as amended by the Commodity Futures Modernization Act of 2000 (7 U.S.C. 1 *et seq.*, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763).

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I. Background

On December 21, 2000, the CFMA was signed into law. Among other things, the CFMA lifted the ban on single stock and narrow-based stock index futures (''security futures'').[3] In addition, the CFMA established a framework for the joint regulation of security futures products[4] by the CFTC and the Securities and Exchange Commission (''SEC'').[5]

[1] 7 U.S.C. 1 *et seq.*

[2] Pub. L. 106–554, 114 Stat. 2763. The text of the CFMA may be accessed on the Internet at http://agriculture.house.gov/txt5660.pdf.

[3] *See* section 251(a) of the CFMA. This trading previously had been prohibited by section 2(a)(1)(B)(v) of the CEA.

[4] The term ''security futures product'' is defined in section 1a(32) of the CEA and section 3(a)(56) of the Exchange Act to mean ''a security future or any put, call, straddle, option, or privilege on any security future.'' The term ''security future'' is defined in section 1a(31) of the CEA and section 3(a)(55)(A) of the Exchange Act to include futures contracts on individual securities and on narrow-based security indexes: The term ''narrow-based security index'' is defined in section 1a(25) of the CEA and section 3(a)(55)(B) of the Exchange Act. Because the CFMA also provides that options on security futures cannot be traded until at least December 21, 2003, security futures are the only security futures product that may be available for trading until that date.

[5] The CFMA also prescribes the dates on which security futures trading can commence.

Prior to enactment of the CFMA, the Shad-Johnson Accord (''Accord'')[6] governed trading in contracts of sale for future delivery (''futures contracts'' or ''futures'') on securities and security indexes. Negotiated by the Chairmen of the SEC and the CFTC in 1982 and signed into law in 1983, the Accord permitted futures exchanges to offer futures contracts on security indexes if the contracts satisfied certain statutory criteria: (1) The contract had to be cash-settled; (2) the contract could not be readily susceptible to manipulation; and (3) the underlying securities had to measure and reflect the entire market or a substantial segment of the market, *i.e.,* it was a ''broad-based'' security index. The Accord prohibited any futures on security indexes that did not meet these criteria.[7]

In addition to repealing the prohibition on certain types of security futures, the CFMA amended the CEA and the Securities Exchange Act of 1934 (''Exchange Act'') by adding a definition of ''narrow-based security index.'' Futures contracts on security indexes that are narrow-based security indexes will be jointly regulated by the CFTC and the SEC under the framework established by the CFMA. Section 2(a)(1)(D) of the CEA and section 6(h) of the Exchange Act establish listing standards and conditions for entities wishing to list and trade security futures products.

It is important that the listing standards and conditions in the CEA and the Exchange Act be easily understood and applied by boards of trade. The rules proposed today address issues related to these standards and establish uniform requirements related to position limits, as well as provisions to minimize the potential for manipulation and disruption to the futures markets and underlying securities markets. Additional conditions related to trading halts and acceptable procedures for cash settlement will be addressed in a future joint rulemaking by the Commission and the SEC.

Specifically, principal-to-principal transactions between institutions cannot commence until August 21, 2001 and retail transactions cannot commence until December 21, 2001. Both starting dates are conditioned upon the registration of a futures association as a national securities association under the Exchange Act. Section 202(a) of the CFMA; Section 6(g)(5) of the Exchange Act.

[6] The Accord was codified in the Securities Act Amendments of 1982, which amended section 2 of the Securities Act of 1933, section 3 of the Securities Exchange Act of 1934, and section 2(a)(1)(B) of the Commodity Exchange Act.

[7] *See id.*

II. Section-by-Section Analysis

Purpose and Scope

Section 251 of the CFMA amends section 2 of the CEA by providing that in order for a board of trade to list security futures products, the security futures products and the securities underlying the security futures products must meet a number of standards and conditions termed ''listing standards.'' Boards of trade may list for trading only security futures products that conform to the conditions and criteria specified in section 2(a)(1)(D)(i) of the CEA, which, among other criteria, requires that security futures products not be readily susceptible to manipulation. Except as otherwise provided in a rule, regulation or order, the underlying security or securities must be registered pursuant to section 12 of the Exchange Act and must be based upon common stock or such other equity securities as the Commission and the SEC jointly determine appropriate. These listing standards also relate to rules regarding settlement; who may deal in security futures products; prohibitions on dual trading; the prevention of price manipulation; and rules governing surveillance, audit trails, trading halts, and margin requirements. These proposed rules would implement these provisions of the CFMA and enumerate certain requirements and conditions for listing and trading security futures products.

Furthermore, section 6(h)(2) of the Exchange Act, as amended by section 206 of the CFMA, provides that security futures products must conform to listing standards that the national securities exchange or national securities association registered under section 15A of the Exchange Act (''exchange or association'') files with the SEC under section 19(b) of the Exchange Act. Section 6(h)(2) of the Exchange Act also requires that a national securities exchange or national securities association meet the requirements of section 2(a)(1)(D)(i) of the CEA. In addition, section 6(h)(3)(C) of the Exchange Act imposes the additional requirement that the exchange or association's listing standards for security futures products must be no less restrictive than comparable listing standards for security options. The SEC may issue guidance for boards of trade as to the listing standards that would satisfy this requirement.

Security futures products may be traded on any board of trade that is designated as a contract market by the Commission pursuant to section 5 of the CEA or that is registered with the Commission as a derivatives transaction execution facility (''DTF'') pursuant to section 5a of the CEA. In addition, section 5f(a) of the CEA permits certain entities that are otherwise regulated by the SEC to be designated contract markets for the limited purpose of trading security futures products. Specifically, any board of trade that is registered with the SEC as a national securities exchange pursuant to section 6(a) of the Exchange Act, is registered with the SEC as a national securities association pursuant to section 15A(a) of the Exchange Act, or is an alternative trading system (''ATS'') as defined by section 1a(1) of the CEA shall be a designated contract market in security futures products if certain conditions are met.[8]

Section 41.21 Requirements for Underlying Securities

Paragraph (a) of proposed section 41.21 addresses security futures products based on a single security. Paragraph (a) implements the requirements of sections 2(a)(1)(D)(i)(I) and (III) of the CEA[9] by providing that a security futures product based on a single security may be traded if, except as otherwise provided by a rule, regulation or order, the security is registered pursuant to section 12 of the Exchange Act and the security is common stock or other equity security as the Commission and the SEC determine appropriate. Furthermore, security futures products must conform to other regulations issued by the SEC, in accordance with section 6(h) of the Exchange Act, as amended by section 206 of the CFMA.

Paragraph (b) of proposed section 41.21 addresses security futures products based on two or more securities. Subsection (b) implements a substantive provision of section 1a of the CEA, as amended by section 101 of the CFMA, by providing that a futures contract based on an index comprised of two or more securities may be traded as a security futures product if: (1) The index meets the narrow-based security index definition found in section 1a(25)

[8] *See* 66 FR 29517–23 (May 31, 2001). In that notice, the Commission proposed new regulations that would provide notice procedures for a national securities exchange, a national securities association, or an alternative trading system to become a designated contract market in security futures products. By registering with the Commission, a national securities exchange, a national securities association, or an alternative trading system is, by definition, a designated contract market for purposes of trading security futures products. Hence, references in the proposed rules to designated contract markets include notice-registered contract markets, except where otherwise noted.

[9] Section 251 of the CFMA added subparagraph (D) to section 2(a)(1) of the CEA.

of the CEA; [10] (2) the securities are registered pursuant to section 12 of the Exchange Act; (3) the securities are common stock or other equity securities as the Commission and the SEC determine appropriate; and (4) the securities meet the listing standards required by the SEC pursuant to section 6(h) of the Exchange Act.

Paragraph (c) of proposed section 41.21 is reserved for rulemaking pursuant to section 2(a)(1)(D)(v) of the CEA, which allows the Commission and the SEC to jointly modify the criteria of sections 2(a)(1)(D)(i)(I) and 2(a)(1)(D)(i)(III) of the CEA.

Section 41.22 Required Certifications

Section 2(a)(1)(D)(vii) of the CEA makes it unlawful for a designated contract market or registered derivatives transaction execution facility to list for trading or execution a security futures product unless it has provided the Commission with a certification that the security futures product and the board of trade meet specified requirements. Accordingly, as discussed below, paragraphs (b) through (j) of proposed section 41.22 require designated contract markets and registered derivatives transaction execution facilities to certify that they meet the specified requirements of section 2(a)(1)(D)(vii) of the CEA. In addition, paragraph (a) of proposed § 41.22 requires a designated contract market or registered derivatives transaction execution facility to certify that the security or securities underlying a security futures product meet the requirements of proposed rule 41.21, including the requirement that the securities underlying a security futures product conform to the listings standards filed with the SEC under section 19(b) of the Exchange Act, as discussed above.

Section 2(a)(1)(D)(i)(II) of the CEA provides that, if a security futures product is not cash-settled, the designated contract market or registered derivatives transaction execution facility must have arrangements with a clearing agency registered with the SEC for the payment and delivery of the securities underlying the security futures product. Paragraph (b) of proposed § 41.22 implements this provision by requiring a certification that the designated contract market or registered derivatives transaction execution facility will comply with this requirement.

Section 2(a)(1)(D)(i)(V) of the CEA provides that only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Exchange Act (including notice-registered brokers or dealers) [11] may solicit, accept orders for, or otherwise deal in any transaction in or in connection with security futures products. Paragraph (d) of proposed § 41.22 implements this provision by requiring a certification that only these entities and persons, except to the extent otherwise permitted under the Exchange Act and the rules and regulations thereunder, may accept orders for or otherwise deal in security futures products.

Section 2(a)(1)(D)(i)(VI) of the CEA provides that security futures products must be subject to the prohibition against dual trading in section 4j of the CEA or section 11(a) of the Exchange Act. Paragraph (e) of proposed § 41.22 implements this requirement by requiring a designated contract market or registered derivatives transaction execution facility to prohibit dual trading in accordance with proposed section 41.27.

Notice designated contract markets are exempt from the provisions of section 4j of the CEA by virtue of section 5f(b)(1)(B). A notice designated contract market therefore does not need to certify that it is acting in accordance with proposed rule 41.27. However, it should be noted that notice designated contract markets are still bound by the prohibition against dual trading under section 11(a) of the Exchange Act and any accompanying rules and regulations.

Section 2(a)(1)(D)(i)(VII) of the CEA requires that designated contract markets and registered derivatives transaction execution facilities maintain procedures to prevent manipulation of the price of security futures products, any underlying security, an option on such security, or an option on a group or index including such security. Paragraph (f) of proposed § 41.22 requires a certification that trading in the security futures product will not be readily susceptible to manipulation of the price of such security futures product or of the price of any underlying security or securities or any option thereon.

Section 2(a)(1)(D)(i)(VIII) of the CEA requires designated contract markets and registered derivatives transaction execution facilities on which security futures products are traded to coordinate surveillance with markets that trade the underlying security or any related security, in order to detect manipulation and insider trading. This requirement is proposed to be implemented by paragraph (g) of proposed § 41.22, which requires that a board of trade certify that it is a member of the Intermarket Surveillance Group (the ''ISG'').

The Intermarket Surveillance Group was created under the auspices of the SEC in 1983 as a forum to ensure that national securities exchanges and national securities associations adequately share surveillance information and coordinate inquiries and investigations designed to address potential intermarket manipulations and trading abuses. All national securities exchanges and national securities associations are full members of the ISG. Full members routinely share a great deal of surveillance and investigatory information, and this framework has proven to be an essential mechanism to ensure that there is adequate information sharing and investigatory coordination for potential intermarket manipulations and trading abuses.

In view of the growth of stock index futures contracts, since 1987, several futures exchanges and non-U.S. exchanges and associations have been affiliate members of the ISG. Affiliate members are required to share information on a more limited basis with the ISG.

To ensure that boards of trade have procedures in place for the coordinated surveillance required by section 2(a)(1)(D)(i)(VIII) of the CEA, the Commission believes that it is essential that all boards of trade that trade security futures products be full members of the ISG. In view of this proposed requirement and recognizing the essential role played by the ISG, as noted above, the Commission also believes that the ISG should grant full memberships to all boards of trade that trade security futures products upon a

[10] Section 1a(25) of the CEA defines a narrow-based security index as an index: (i) that is comprised of nine or fewer component securities; (ii) in which a component security comprises more than 30 percent of the index's weighting; (iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or (iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50 million or, in the case of an index with 15 or more component securities, $30 million.

[11] Section 4f of the CEA, as amended by section 252(b) of the CFMA, allows brokers and dealers registered with the SEC to register with the Commission as futures commission merchants or introducing brokers so long as they adhere to certain requirements regarding transactions in connection with security futures products.

good-faith showing that such entities meet the criteria for full membership.[12]

Section 2(a)(1)(D)(i)(IX) of the CEA requires that designated contract markets and registered derivatives transaction execution facilities on which security futures products are traded have audit trails in place to facilitate the coordinated surveillance required by subclause (VIII). Paragraph (h) of proposed § 41.22 implements this requirement. The Commission believes that the audit trails already in place on designated contract markets can serve this purpose. Based on future developments of markets for security futures products, modifications may be appropriate.

Section 2(a)(1)(D)(i)(X) of the CEA requires that designated contract markets and registered derivatives transaction execution facilities have in place procedures to coordinate trading halts between boards of trade. Paragraph (i) of proposed § 41.22 requires a board of trade to certify that it has such procedures in place.

Alternative trading systems, national securities associations registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchanges registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which an alternative trading system is a member do not need to make certifications under paragraphs (g), (h), and (i) of this section, as provided by sections 2(a)(1)(D)(i)(VIII)–(X).

Section 2(a)(1)(D)(i)(XI) of the CEA requires that the margin requirements for security futures products comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Exchange Act. Paragraph (j) of proposed § 41.22 implements this section by requiring a certification of compliance with the margin requirements currently being drafted in a separate rulemaking.[13]

Section 41.23 Listing of Security Futures Products for Trading

Section 2(a)(1)(D)(vii) of the CEA prescribes that a designated contract market or registered derivatives transaction execution facility must provide the Commission with a certification of compliance with section 2(a)(1)(D)(i) of the CEA before trading or executing a security futures product. Paragraph (a) of proposed § 41.23 implements this requirement by describing the documents that must be filed with the Commission, including documents and certifications required by proposed §§ 41.22 and 41.25.

Paragraph (b) of proposed § 41.23 prescribes the procedures for voluntary submission by designated contract markets or registered derivatives transaction execution facilities of security futures products for Commission approval, as permitted by section 5c(c)(2) of the CEA. Notice designated contract markets would not be permitted to request Commission approval of security futures products, since they are exempt from the provisions of 5c of the CEA by virtue of section 5f(b)(1)(D) of the CEA.

Section 41.24 Rule Amendments Relating to Security Futures Products

Section 5c(c)(1) of the CEA, as enacted by section 113 of the CFMA, provides that a registered entity may implement a rule or rule amendment by certifying that the new rule or rule amendment complies with the CEA.[14] Paragraph (a) of proposed § 41.24 requires designated contract markets (including notice designated contract markets) and registered derivatives clearing organizations to file with the Commission any rule or rule amendment. Designated contract markets pursuant to section 5 of the CEA and registered derivatives clearing organizations pursuant to section 5b of the CEA (but not notice designated clearing organizations), must follow the procedures for self-certification of rules and rule amendments relating to security futures contained in proposed § 41.24(a)(4).

Paragraph (b) of proposed § 41.24 would mandate that the procedures of paragraph (a) also apply to the self-certification of rules relating to security futures products by registered derivatives transaction execution facilities, notwithstanding proposed § 37.7.

Paragraph (c) of proposed § 41.24 would allow a designated contract market, registered derivatives transaction execution facility, or registered derivatives clearing organization to submit rules for Commission approval, as permitted by section 5c(c)(2) of the CEA. However, notice designated contract markets would not be permitted to request Commission approval of rules, since section 5f of the CEA exempts these entities from section 5c(c)(2) of the CEA.

Section 41.25 Additional Conditions for Trading Security Futures Products

Section 2(a)(1)(D)(i)(VII) of the CEA requires that trading in a security futures product not be readily susceptible to manipulation of the price of the security futures product, the price of any underlying security, option on such security, or option on a group or index of including such securities. Proposed § 41.25 establishes requirements in this regard related to data reporting, trading halts, position limits, and certain contract design features. Paragraph (a) of proposed § 41.25 establishes requirements that are common to all security futures products, while paragraphs (b) and (c) establish requirements for cash-settled and physical delivery contracts, respectively.

Paragraph (a)(1) of proposed § 41.25 requires designated contract markets and registered derivatives transaction execution facilities to comply with part 16 of the Commission's regulations regarding the daily reporting of market data. Paragraph (a)(2) is reserved for the establishment of rules providing for regulatory halts for trading in security futures products, which will be addressed in a separate rulemaking. Paragraph (a)(3) requires designated contract markets and registered derivatives transaction execution facilities to establish speculative position limits or position accountability rules for security futures products, generally based on the average daily trading volume of the underlying security during the most recent six-month period.

Specifically, the Commission is proposing to require boards of trade to adopt speculative position limit or position accountability rules for listed security futures. The level of the position limit and whether a position limit is required depends upon the trading activity and capitalization of the security or securities underlying the security future. The speculative position limit level adopted by a board of trade should be consistent with the obligation in section 2(a)(1)(D)(i)(VII) of the CEA that the designated contract market or registered derivatives transaction execution facility maintain procedures to prevent manipulation of the price of the security futures product and the underlying security or securities.

The position limit levels proposed in this rule are set at levels comparable to the limits that currently apply to

[12] The Commission understands that the SEC concurs with the Commission's belief regarding the requirement that boards of trade trading security futures become full ISG members and that such boards of trade be granted full ISG membership.

[13] The proposed rules regarding margin requirements will be published in the near future. Once the margin requirement rules are published, the final version of these rules will note the part and section wherein margin requirements can be found.

[14] Section 1a(29) of the CEA defines registered entities as designated contract markets, registered derivatives transaction execution facilities, registered derivatives clearing organizations, and notice-designated contract markets.

options on individual securities. However, the proposed position limit requirements for security futures differ from individual security option position limit rules in several ways. In this regard, the proposed limits would only apply to an expiring security futures contract during its five last trading days. The Commission believes that it is during that time period that the potential for manipulation based on an extraordinarily large futures position would most likely occur. Further, for security futures contracts based on a security that has an average daily trading volume greater than 20 million shares, the Commission believes that the threat of manipulation is sufficiently reduced such that an exchange could substitute a position accountability rule for a fixed position limit. Under such a rule, a trader holding a position in a security future that exceeded a threshold level determined by the exchange (e.g., no more than 22,500 contracts of 100 shares) would agree to provide information to the exchange regarding that position and consent to halt increasing the position if requested by the exchange.

Paragraph (b) of proposed § 41.25 relates to security futures products that are cash settled. This paragraph provides that the cash-settlement provisions of security futures products must be reliable and acceptable, reflect the price of the underlying security or securities, and not be readily susceptible to manipulation. Paragraph (b) is in part reserved for specific rules relating to special requirements regarding the cash-settlement price, which will be addressed in a separate rulemaking.

Paragraph (c) of proposed § 41.25 relates to security futures products that are settled by actual delivery of the underlying security or securities. This paragraph provides that a board of trade must effect physical delivery through a clearing agency registered pursuant to section 17A of the Exchange Act. This provision implements section 2(a)(1)(D)(i)(II) of the CEA, which requires that, if a security futures product is not cash settled, the board of trade on which the product is traded must have arrangements in place with such a clearing agency for payment and delivery of the underlying securities.

III. Request for Comments

The Commission solicits comments on all aspects of Proposed Rules 41.21 through 41.25 under the CEA. In particular, do the proposed filing and certification procedures represent effective and reasonable ways to ensure that the requirements of the CEA and the Exchange Act are satisfied? In addition, the Commission seeks comments on whether the proposed position limit provisions are appropriate to deter manipulation in security futures products, and whether it is desirable to establish the applicable position limit levels based on average daily trading volume and capitalization of the underlying securities. The Commission also seeks comment on whether any potential manipulation of security futures products is more likely to occur at contract expiration than at other times. Commenters are welcome to offer their views on any other matter raised by the proposed rules.

IV. Costs and Benefits of the Proposed Rules

Section 15 of the CEA requires the Commission to consider the costs and benefits of its action before issuing a new regulation.[15] The Commission understands that, by its terms, section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15 simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The proposed rules constitute one part of a package of related rule provisions. The rules provide guidance and establish procedures for trading facilities in order to facilitate compliance with governing laws related to security futures products.

The Commission has considered the costs and benefits of the proposed rules as a totality, in light of the specific areas of concern identified in section 15. The proposed rules should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets or on the risk management practices of trading facilities or others. The proposed rules also should have no material effect on the protection of market participants and the public and should not impact the efficiency and competition of the markets.

Accordingly, the Commission has determined to propose the rules discussed above. The Commission invites public comment on the application of the cost-benefit provision of section 15 of the CEA in regard to the proposed rules. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposed rules.

V. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3501 *et seq.*) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking contains information collection requirements within the meaning of the PRA. The Commission has submitted a copy of this part to the Office of Management and Budget (OMB) for its review in accordance with 44 U.S.C. 3507(d).

Collection of Information: Part 41, Relating to Security Futures Products, OMB Control Number 3038–XXXX.

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number. The Commission is currently requesting a control number for this information collection from OMB.

As noted above, the CFMA lifted the ban on trading single stock and narrow-based stock index futures and established a framework for the joint regulation of these products by the Commission and the SEC. In addition, the CFMA amended the CEA and the Exchange Act by adding a definition of ''narrow-based security index,'' which establishes an objective test of whether a security index is narrow-based.[16] Futures contracts on security indexes that meet the statutory definition are jointly regulated by the Commission and the SEC. Futures contracts on indexes that do not meet the statutory definition

[15] 7 U.S.C. 19.

[16] See section 1a(25)(A) of the CEA and section 3(a)(55)(B) of the Exchange Act.

remain under the sole jurisdiction of the Commission.

The effect of proposed rules 41.22, 41.23, 41.24, and 41.25 will be to increase the burden previously submitted to OMB by 750 hours resulting from the preparation of materials to be filed with the Commission in connection with the listing of security futures products by designated contract markets and registered derivatives transaction execution facilities.

The estimated burden of proposed rules 41.22, 41.23, 41.24, and 41.25 was calculated as follows:

Estimated number of respondents: 15.

Total annual responses: 50.

Estimated average number of hours per response: 1.

Estimated total number of hours of annual burden: 750.

This annual reporting burden represents an increase of 750 hours as a result of the proposed new rules.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Building, Washington, DC 20503, Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of 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).

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the Commission from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.[17] The rules adopted herein would affect contract markets and other trading facilities. The Commission has previously established certain definitions of ''small entities'' to be used in evaluating the impact of its rules on small entities in accordance with the RFA.[18] In its previous determinations, the Commission has concluded that contract markets are not small entities for the purpose of the RFA.[19] The Commission has also recently proposed determining that the other trading facilities subject to its jurisdiction, for reasons similar to those applicable to contract markets, would not be small entities for purposes of the RFA.[20]

Accordingly, the Commission does not expect the rules, as proposed herein, to have a significant economic impact on a substantial number of small entities. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on this finding and on its proposed determination that trading facilities such as registered derivatives transaction execution facilities are not small entities for purposes of the RFA.

VI. Statutory Authority

The Commission has the authority to propose these rules pursuant to sections 1a, 2(a)(1)(D), and 5c(c) of the CEA, [7 U.S.C. 1a, 2(a)(1)(D), and 7a–2(c)].

List of Subjects in 17 CFR Part 41

Security futures products.

Text of Proposed Rules

In accordance with the foregoing, Title 17, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

[17] 5 U.S.C. 601 *et seq.*

[18] *See* 47 FR 18618–21 (April 30, 1982).

[19] *See id.* at 18619 (discussing contract markets).

[20] *See* 66 FR 14262, 14268 (March 9, 2001).

PART 41—SECURITY FUTURES PRODUCTS

1. The authority citation for Part 41 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 1a(25), 2(a), 6j, 7a–2(c) and 12a(5).

2. Subpart C is proposed to be added to read as follows:

Subpart C—Requirements and Standards for Security Futures Products

Sec.

41.21 Requirements for underlying securities.
41.22 Required certifications.
41.23 Listing of security futures products for trading.
41.24 Rule amendments to security futures products.
41.25 Additional conditions for trading security futures products.

Subpart C—Requirements and Standards for Listing Security Futures Products

§ 41.21 Requirements for underlying securities.

(a) *Security futures products based on a single security.* A security future is eligible to be traded only if the security underlying the security future is:

(1) A security registered pursuant to section 12 of the Securities Exchange Act of 1934;

(2) The security is:

(i) Common stock, or

(ii) Such other equity security as the Commission and the SEC jointly deem appropriate; and,

(3) The security conforms with the listing standards that the designated contract market or registered derivatives transaction execution facility has filed with the SEC under section 19(b) of the Securities Exchange Act of 1934.

(b) *Security futures product based on two or more securities.* An index of two or more securities is eligible to be traded as a security future only if:

(1) The index is a narrow-based security index as defined in section 1a(25) of the Act;

(2) The securities in the index are registered pursuant to section 12 of the Securities Exchange Act of 1934;

(3) The securities in the index are:

(i) Common stock, or

(ii) Such other equity securities as the Commission and the SEC jointly deem appropriate; and,

(4) The index conforms with the listing standards that the designated contract market or registered derivatives transaction execution facility has filed with the SEC under section 19(b) of the Securities Exchange Act of 1934.

(c) [Reserved for future rulemaking regarding exemptions to the listing

standards set forth in paragraphs (a) and (b) of this section.]

§ 41.22 Required certifications.

It shall be unlawful for a designated contract market or registered derivatives transaction execution facility to list for trading or execution a security futures product unless the designated contract market or registered derivatives transaction execution facility has provided the Commission with a certification that the specific security futures product or products and the designated contract market or registered derivatives transaction execution facility meet, as applicable, the following criteria:

(a) The underlying security or securities satisfy the requirements of § 41.21;

(b) If the security futures product is not cash settled, arrangements are in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 for the payment and delivery of the securities underlying the security futures product;

(c) [Reserved for common clearing following compliance date];

(d) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder, will solicit, accept any order for, or otherwise deal in any transaction in or in connection with security futures products;

(e) If the board of trade is a designated contract market pursuant to section 5 of the Act or is a registered derivatives transaction execution facility pursuant to section 5a of the Act, dual trading in these security futures products is restricted in accordance with § 41.27;

(f) Trading in the security futures products is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities, consistent with the conditions for trading of § 41.25;

(g) The board of trade is a member of the Intermarket Surveillance Group. A board of trade that is an alternative trading system, national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member, does not need to make this certification;

(h) An audit trail is in place to facilitate coordinated surveillance among the board of trade, any market on which any security underlying a security futures product is traded, and any market on which any related security is traded. A board of trade that is an alternative trading system, national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member, does not need to make this certification;

(i) Procedures are in place to coordinate regulatory trading halts between the board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded. A board of trade that is an alternative trading system, national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member, does not need to make this certification; and

(j) The margin requirements for the security futures product will comply with the provisions specified in rule [XX].[1]

§ 41.23 Listing of security futures products for trading.

(a) *Initial listing of products for trading.* To list new security futures products for trading, a designated contract market or registered derivatives transaction execution facility shall submit to the Commission at its Washington, D.C. headquarters, either in electronic or hard-copy form, to be received by the Commission no later than the day prior to the initiation of trading, a filing that:

(1) Is labeled ''Listing of Security Futures Product;'

(2) Includes a copy of the product's rules, including its terms and conditions;

(3) Includes the certifications required by § 41.22;

(4) Includes a certification that the terms and conditions of the contract comply with the additional conditions for trading of § 41.25; and

(5) If the board of trade is a designated contract market pursuant to section 5 of the Act or a registered derivatives transaction execution facility pursuant to section 5a of the Act, it includes a certification that the security futures product complies with the Act and rules thereunder.

(b) *Voluntary submission of security futures products for Commission approval.* A designated contract market or registered derivatives transaction execution facility may request that the Commission approve any security futures product under the procedures of § 40.5 of this chapter, provided however that the registered entity shall include the certification required by § 41.22 with its submission under § 40.5 of this chapter. Notice designated contract markets may not request Commission approval of security futures products.

§ 41.24 Rule amendments to security futures products.

(a) *Self-certification of rules and rule amendments by designated contract markets and registered derivatives clearing organizations.* A designated contract market or registered derivatives clearing organization may implement any new rule or rule amendment relating to a security futures product by submitting to the Commission at its Washington, DC headquarters, either in electronic or hard-copy form, to be received by the Commission no later than the day prior to the implementation of the rule or rule amendment, a filing that

(1) Is labeled ''Security Futures Product Rule Submission'';

(2) Includes a copy of the new rule or rule amendment;

(3) Includes a certification that the designated contract market or registered derivatives clearing organization has filed the rule or rule amendment with the Securities and Exchange Commission, if such a filing is required; and

(4) If the board of trade is a designated contract market pursuant to section 5 of the Act or is a registered derivatives clearing organization pursuant to section 5b of the Act, it includes the documents and certifications required to be filed with the Commission pursuant to § 40.6 of this chapter, including a certification that the security futures product complies with the Act and rules thereunder.

(b) *Self-certification of rules by registered derivatives transaction execution facilities.* Notwithstanding

[1] As noted in the preamble, the cross-reference to the margin requirement rule will be inserted in the final rules when those proposed rules are published.

§ 37.7 of this chapter, a registered derivatives transaction execution facility may only implement a new rule or rule amendment relating to a security futures product if the registered derivatives transaction execution facility has certified the rule or rule amendment pursuant to the procedures of paragraph (a) of this section.

(c) *Voluntary submission of rules for Commission review and approval.* A designated contract market, registered derivatives transaction execution facility, or a registered derivatives clearing organization clearing security futures products may request that the Commission approve any rule or proposed rule or rule amendment relating to a security futures product under the procedures of § 40.5 of this chapter, provided however that the registered entity shall include the certifications required by § 41.22 with its submission under § 40.5 of this chapter. Notice designated contract markets may not request Commission approval of rules.

§ 41.25 Additional conditions for trading for security futures products.

(a) *Common provisions.*—(1) *Reporting of data.* The designated contract market or registered derivatives transaction execution facility shall comply with chapter 16 of this title requiring the daily reporting of market data.

(2) *Regulatory Trading Halts.* [Reserved for contemporaneous rulemaking.]

(3) *Speculative Position Limits.* The designated contract market or registered derivatives transaction execution facility shall have rules in place establishing position limits or position accountability procedures for the expiring futures contract month. The designated contract market or registered derivatives transaction execution facility shall,

(i) Adopt a net position limit no greater than 13,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; except where,

(A) For security futures products where, for the most recent six-month period, the average daily trading volume in the underlying security exceeds 20 million shares, or exceeds 15 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market or registered derivatives transaction execution facility may adopt a net position limit no greater than 22,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; or

(B) For security futures products where, for the most recent six-month period, the average daily trading volume in the underlying security exceeds 20 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market or registered derivatives transaction execution facility may adopt a position accountability rule. Upon request by the designated contract market or registered derivatives transaction execution facility, traders who hold net positions greater than 22,500 (100-share) contracts, or such lower level specified by exchange rules, must provide information to the exchange and consent to halt increasing their positions when so ordered by the exchange.

(ii) For a security futures product comprised of more than one security, to be eligible for paragraphs (a)(3)(i)(A) and (a)(3)(i)(B) of this section, the average daily trading volume required must apply to the least liquid security in the index.

(iii) Exchanges may approve exemptions from these position limits pursuant to rules that are consistent with § 150.3 of this chapter.

(b) *Special requirements for cash-settled contracts.* For cash-settled security futures products, the cash-settlement price must be reliable and acceptable, be reflective of prices in the underlying securities market and be not readily susceptible to manipulation. To meet these requirements, the designated contract market or registered derivatives transaction execution facility must have rules providing that: [Reserved for contemporaneous rulemaking.]

(c) *Special requirements for physical delivery contracts.* For security futures products settled by actual delivery of the underlying security or securities, payment and delivery of the underlying security or securities must be effected through a clearing agency that is registered pursuant to section 17A of the Securities Exchange Act of 1934.

Issued in Washington, DC, on July 12 , 2001, by the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 01–17904 Filed 7–19–01; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 235–2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice currently exempts the following system of records from subsection (d) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2): Controlled Substances Act Nonpublic Records (JUSTICE/JMD–002). This proposed rule makes changes to reflect the current statutory authority, as well as the primary reason for exempting the system.

DATES: Submit any comments by August 20, 2001.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1400 National Place Building, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: The system notice for ''Controlled Substances Act Nonpublic Records (JUSTICE/JMD–002)'' is being published in full text in the Notice section of today's **Federal Register.**

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR Part 16 as follows:

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend § 16.76 by revising paragraph (b)(1) as follows:

§ 16.76 Exemption of Justice Management Division.

* * * * *

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Access to and use of the nonpublic records maintained in this system are restricted by law. Section 3607(b) of Title 18 U.S.C. (enacted as part of the Sentencing Reform Act of 1984, Public Law 98–473, Chapter II) provides that the sole purpose of these records shall be for use by the courts in determining whether a person found guilty of

violating section 404 of the Controlled Substances Act qualifies:

(i) For the disposition available under 18 U.S.C. 3607(a) to persons with no prior conviction under a Federal or State law relating to controlled substances, or

(ii) For an order, under 18 U.S.C. 3607(c), expunging all official records (except the nonpublic records to be retained by the Department of Justice) of the arrest and any subsequent criminal proceedings relating to the offense.

* * * * *

Dated: July 13, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

[FR Doc. 01–18155 Filed 7–19–01; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AK66

Special Monthly Compensation for Women Veterans Who Lose a Breast as a Result of a Service-Connected Disability

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of special monthly compensation for a woman veteran who loses one or both breasts as a result of service-connected disability. The intended effect of this amendment is to implement legislation authorizing VA to provide this benefit.

DATES: Comments must be received by VA on or before August 20, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AK66.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 1114(k) of title 38, United States Code, provides a list of service-connected disabilities for which Congress has authorized a special benefit to be paid, independent of any other compensation provided under section 1114 for schedular disability rated under 38 CFR part 4, VA's Schedule for Rating Disabilities. This additional compensation is commonly referred to as special monthly compensation ''k'' or SMC ''k.'' Section 302 of the Veterans Benefits and Health Care Improvement Act of 2000, Public Law 106–419, 114 Stat. 1822, amended section 1114(k) by making anatomical loss of one or both breasts (including loss by mastectomy) by a woman veteran a condition warranting this special monthly compensation.

The provisions governing special monthly compensation under 38 U.S.C. 1114(k) are codified in title 38 of the Code of Federal Regulations under paragraph (a) of § 3.350, which is titled ''Special monthly compensation ratings.'' Paragraph (a) currently states that special monthly compensation under 38 U.S.C. 1114(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, or complete organic aphonia with constant inability to communicate by speech. In order to implement Public Law 106–419, we propose to remove ''or'' preceding ''complete organic aphonia'' in this paragraph and to add following ''speech'' the phrase ''or, in the case of a woman veteran, the anatomical loss of one or both breasts (including loss by mastectomy).''

We also propose to add new paragraph (7) under paragraph (a) to define ''anatomical loss of a breast'' for purposes of this benefit. Consistent with the assignment of special monthly compensation for certain other losses, for example, for loss of use of a foot, only when there is complete, but not partial, peroneal nerve paralysis, we propose to require that there be complete loss of breast tissue in order to qualify for this benefit. Therefore ''anatomical loss of a breast'' would exist when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury). Various types of breast surgery—radical mastectomy, modified radical mastectomy, simple (or total) mastectomy, and wide local excision (including partial mastectomy, lumpectomy, tylectomy, segmentectomy, and quadrantectomy)—are defined under diagnostic code 7626 (breast surgery) in 38 CFR 4.116. Radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy would be the equivalent of ''anatomical loss of a breast'' because they entail complete removal of breast tissue, but wide local excision, defined as removal of a portion of the breast tissue, would not be because it involves less than complete removal of breast tissue. We therefore propose that paragraph (7) state that ''anatomical loss of a breast'' exists when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury) and that as defined in 38 CFR 4.116, radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy result in anatomical loss of a breast, but wide local excision, with or without significant alteration of size or form, does not.

The exclusion of wide local excision, which can range from undetectable removal of a small amount of breast tissue up to any extent of breast surgery less than a simple (total) mastectomy, would eliminate the need to attempt to define how much removal of breast tissue less than complete removal would qualify for the benefit. There is no standard or feasible way to define such partial removal of breast tissue, so proposing that nothing short of total mastectomy (or equivalent loss of breast tissue due to injury) will qualify as anatomical loss of a breast would ensure consistency in assigning this benefit.

In addition, as we have done for other conditions that warrant special monthly compensation listed in 38 CFR 4.116, the section of the rating schedule that addresses gynecological conditions and disorders of the breast, we propose to annotate all evaluations under diagnostic code 7626 (breast surgery) except for zero percent (which is assigned for wide local excision) with a reference to a footnote instructing raters to review for entitlement to Special Monthly Compensation. The footnote, which is in the current regulation, reads: ''Review for entitlement to special monthly compensation under § 3.350 of this chapter.'' We also propose to amend an existing note at the beginning of § 4.116, which now reads in part, ''When evaluating any claim involving loss or loss of use of one or more creative organs, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special

monthly compensation,'' to include a reference to anatomical loss of one or both breasts. These provisions will promote consideration of the new provision by raters.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance program number for this benefit.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

38 CFR Part 4

Disability benefits, Pension, Individuals with disabilities, Veterans.

Approved: July 12, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.350, paragraph (a) introductory text, the first sentence is revised; and a new paragraph (a)(7) is added immediately following the authority citation for paragraph (a)(6), to read as follows:

§ 3.350 Special monthly compensation ratings.

* * * * *

(a) * * * Special monthly compensation under 38 U.S.C. 1114(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, complete organic aphonia with constant inability to communicate by speech or, in the case of a woman veteran, the anatomical loss of one or both breasts (including loss by mastectomy). * * *

* * * * *

(7) Anatomical loss of a breast exists when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury). As defined in 38 CFR 4.116, radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy result in anatomical loss of a breast, but wide local excision, with or without significant alteration of size or form, does not.

(Authority: 38 U.S.C. 501, 1114(k))

* * * * *

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

3. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

4. Section 4.116, Note 2 is amended by removing ''one or more creative organs,'' and adding, in it place, ''one or more creative organs or anatomical loss of one or both breasts,''.

5. Diagnostic code 7626 in 38 CFR 4.116 is revised to read as follows:

§ 4.116 Schedule of ratings—gynecological conditions and disorders of the breast.

	Rating
* * * * *	
7626 Breast, surgery of:	
Following radical mastectomy:	
Both	[1] 80
One	[1] 50
Following modified radical mastectomy:	
Both	[1] 60
One	[1] 40
Following simple mastectomy or wide local excisio with significant alteration of size or form:	
Both	[1] 50
One	[1] 30
Following wide local excision without significant alteration of size or form:	
Both or one	0

Note: For VA purposes:

[1] *Radical mastectomy* means removal of the entire breast, underlying pectoral muscles, and regional lymph nodes up to the coracoclavicular ligament.

[2] *Modified radical mastectomy* means removal of the entire breast and axillary lymph nodes (in continuity with the breast). Pectoral muscles are left intact.

[3] *Simple (or total) mastectomy* means removal of all of the breast tissue, nipple, and a small portion of the overlying skin, but lymph nodes and muscles are left intact.

[4] *Wide local excision* (including partial mastectomy, lumpectomy, tylectomy, segmentectomy, and quadrantectomy) means removal of a portion of the breast tissue.

* * * * *

[FR Doc. 01–18207 Filed 7–19–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 123–1123; FRL–7016–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP). EPA is approving a revision to Missouri rule ''Control of Emissions From Industrial Surface Coating Operations.'' This revision will ensure consistency between the state and Federally approved rules, and ensure Federal enforceability of the state's air program rule revision pursuant to section 110 of the Clean Air Act.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in

commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received in writing by August 20, 2001.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 29, 2001.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–18090 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 119–1119; FRL–7015–7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri. This approval pertains to revisions to a rule which controls emissions from aluminum foil rolling sources in the St. Louis, Missouri, nonattainment area. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received in writing by August 20, 2001.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 29, 2001.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–18092 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA168–4109b; FRL–7013–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Control of VOCs from Wood Furniture Manufacturing, Surface Coating Processes and Other Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The revisions include the adoption of new VOC regulations for wood furniture manufacturing operations. These revisions also add new definitions, and amend or delete certain existing definitions for terms used in regulations pertaining to volatile organic compound (VOC) sources. The revisions also clarify the requirements Pennsylvania's surface coating regulations. Lastly, the revisions include minor amendments to Pennsylvania's regulations pertaining to sampling and testing methods. the addition, revision or deletion of terms used in regulations pertaining to volatile organic compound (VOC) sources, and to amend certain VOC surface coating regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by August 20, 2001.

ADDRESSES: Written comments should be addressed to David Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182 or Ellen Wentworth, (215) 814–2034 at the EPA Region III address above, or by e-mail at *quinto.rose@epa.gov* or *wentworth.ellen@epa.gov*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: July 5, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 01–18187 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD118–3073b; FRL–7013–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From Organic Chemical Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Maryland State Implementation Plan (SIP). The revisions establish reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from organic chemical production. EPA is proposing to approve these revisions in accordance with the requirements of the Clean Air Act (CAA). In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 20, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mail Code 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov* or Carol Febbo, (215) 814–2076, or by e-mail at *febbo.carol@epa.gov* or at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: July 9, 2001.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 01–18191 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 130–1130; FRL–7016–3]

Approval and Promulgation of Implementation Plans; State of Missouri.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of rescinding four redundant particulate matter process weight rate rules. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received in writing by August 20, 2001.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 29, 2001.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–18189 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 96–262; FCC 01–166]

Access Charge Reform

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: In this document, the Federal Communications Commission (Commission) considered whether it should terminate its inquiry into the assessment of a presubscribed interexchange carrier charge (PICC) on the special access lines provided by price cap local exchange carriers (LECs) to interexchange carriers and others. Since the Commission began this inquiry, several developments caused the Commission to conclude that it was no longer necessary to consider permitting these LECs to assess PICCs on their special access lines. Accordingly, in this document the Commission terminated its inquiry into the assessment of such charges but it declared that this docket shall remain open for other purposes.

DATES: The inquiry instituted in the proposed rule published June 6, 1997, at 62 FR 31040 is terminated as of July 20, 2001 with respect to the Commission's proposal to permit price cap LECs to assess a PICC on their special access lines.

FOR FURTHER INFORMATION CONTACT: Richard Lerner, Deputy Chief, Competitive Pricing Division, at (202) 418–1520, or Allen A. Barna, General Attorney, Competitive Pricing Division, at (202) 418–1536. The address is Competitive Pricing Division, Common Carrier Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 96–262, FCC 01–166, Access Charge Reform, adopted May 17, 2001, and released on May 21, 2001. The full text of this document is available for public inspection Monday

through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554. The complete text of the document may be purchased from the Commission's duplicating contractor, ITS, Inc., at 1231 20th Street NW, Washington, DC 20036 (202–857–3800). This Order contains no new or modified information collections subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

Synopsis of the Order

In the Further Notice of Proposed Rulemaking [1] included in *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, First Report and Order,* in CC Docket Nos. 96–262, 94–1, 91–213, 95–72, 12 FCC Rcd 15982, 16155 (1997), 62 FR 31868 (June 11, 1997) (*First Report and Order*), *aff'd, Southwestern Bell Telephone Co. v. FCC,* 153 F.3d 523 (8th Cir. 1998), the Commission tentatively concluded that it should permit price cap LECs to assess a PICC on their special access lines to enable them to recover some of the common line costs assigned to the federal jurisdiction that they incur in providing switched access service to residential and single line business lines. Commenters unanimously opposed that proposal. In this Order, the Commission declined to permit the assessment of such special access PICCs and terminated its inquiry into such an assessment.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the *First Report and Order* included an Initial Regulatory Flexibility Analysis (IRFA) with reference to the Further Notice of Proposed Rulemaking found therein. *First Report and Order,* 12 FCC Rcd at 16170–16172. In the IRFA, the Commission noted that there were thirteen incumbent price cap LECs at that time, that it had limited to those LECs the scope of its proposal to permit the assessment of PICCs on special access lines, and that it had tentatively concluded that each of those LECs had more than 1500 employees and, therefore, that none was a small entity. *First Report and Order,* 12 FCC Rcd at 16171–16172. The Commission sought public comment on its special access PICC proposal, its tentative conclusions, and the related IRFA. No comments were received concerning the conclusion that those price cap carriers were not small entities, the limitation of the special access PICC proposal to such carriers, or the related provisions of the IRFA.

As of April 30 of this year, four Regional Bell Operating Companies and eight other LECs were subject to price cap regulation. *See Material to be Filed in Support of 2001 Annual Access Tariff Filings, Tariff Review Plans,* DA 01–1105 (Com.Car.Bur., Comp. Pricing Div., Apr. 30, 2001), para. 3. While one or more of these eight other LECs may have less than 1500 employees, the Order will not have a significant economic impact on those LECs or any other small entities for the reasons set forth in the following paragraph. This Final Regulatory Flexibility Analysis conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 801(a)(1)(A).

Under the RFA, there will not be a significant economic impact on a substantial number of small entities resulting from this Order. As explained above, this Order simply terminates the Commission's inquiry into whether it should permit price cap LECs to assess PICCs on their special access lines to enable them to recover some of their common line costs. Because this Order does not require or otherwise authorize any change in the provision of access services or the recovery of common line costs by these carriers, there will not be any significant economic impact on these carriers or on any of their customers including small entities. The Commission will send a copy of this Order, including this final certification, to Congress pursuant to the SBREFA, *see* 5 U.S.C. 801 (a)(1)(A), and another copy to the Chief Counsel for Advocacy of the Small Business Administration, *see* 5 U.S.C. 605(b).

Ordering Clause

Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–209, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, and 403, that the inquiry initiated in CC Docket No. 96–262 into the assessment by price cap carriers of a presubscribed interexchange carrier charge on their special access lines is hereby TERMINATED but that this docket shall REMAIN OPEN for other purposes.

List of Subjects in 47 CFR Part 1

Communications common carriers, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17499 Filed 7–19–01; 8:45 am]

BILLING CODE 6712–01–P

[1] See proposed rule published at 62 FR 31040 (June 6, 1997).

Notices

Federal Register
Vol. 66, No. 140
Friday, July 20, 2001

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

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Foreign Agricultural Service (FAS) intends to request an extension for a currently approved information collection procedure for entry of specialty sugars into the United States as described in 7 CFR Part 2011.

DATES: Comments should be received on or before September 18, 2001, to be assured of consideration.

ADDRESSES: Mail or deliver comments to Richard J. Blabey, Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, 1400 Independence Ave., SW., Washington, DC 20250–1021, (202) 720–2916.

FOR FURTHER INFORMATION CONTACT: Richard J. Blabey, at the address above, or telephone at (202) 720–2916, or e-mail at *Blabey@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Specialty Sugar Import Certificates.

OMB Number: 0551–0025.

Expiration Date of Approval: September 30, 2001.

Type of Request: Extension of a currently approved information collection.

Abstract: The quota system established by Presidential Proclamation 4941 of May 5, 1982, prevented the importation of certain sugars used for specialized purposes which originated in countries which did not have quota allocations. Therefore, the regulation at 15 CFR part 2011 (Allocation of Tariff-Rate Quota on Imported Sugars, Syrups and Molasses, subpart B—Specialty Sugar) established terms and conditions under which certificates are issued permitting U.S. importers holding certificates to enter specialty sugars from specialty sugar source countries under the sugar tariff-rate quotas (TRQ). Nothing in this subpart affects the ability to enter specialty sugars at the over-TRQ duty rates. Applicants for certificates for the import of specialty sugars must supply the information required by 15 CFR 2011.205 to be eligible to receive a specialty sugar certificate. The specific information required on an application must be collected from those who wish to participate in the program in order to grant specialty sugar certificates, ensure that imported specialty sugar does not disrupt the current domestic sugar program, and administer the issuance of the certificates effectively.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Importers.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 60 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Request for Comments

The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of the information technology, or any other aspect of this collection of information. Comments on the issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice and Request for Comments, but must be submitted no later than 60 days from the date of publication to be assured of consideration. 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. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

Signed at Washington, DC, on July 5, 2001.

Mattie R. Sharpless,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 01–18141 Filed 7–19–01; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

South Mississippi Electric Power Association; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold a public meeting and prepare an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations for Implementing the National Environmental Policy Act (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794), proposes to prepare an Environmental Assessment related to possible financing assistance to South Mississippi Electric Power Association related to the construction and operation of 475 megawatts of simple cycle, combustion turbine electric generation plants in Mississippi.

Meeting Information: RUS and South Mississippi Electric Power Association will conduct a public meeting on Thursday, August 9, 2001, from 7:00 p.m. until 9:00 p.m. at the headquarters of South Mississippi Electric Power Association, located at 7037 US Highway 49, Hattiesburg, Mississippi.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives of RUS and South Mississippi Electric Power Association will be available at the public meeting to discuss RUS' environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written

comments. Written comments will be accepted for 30 days after the public scoping meeting.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, Rural Utilities Service, at (202) 720–0468. Mr. Quigel's E-mail address is bquigel@rus.usda.gov. Information is also available from Joey Ward of South Mississippi Electric Power Association at (601) 268–2083. Mr. Ward's E-mail address is jward@smepa.com.

SUPPLEMENTARY INFORMATION: South Mississippi Electric Power Association proposes to construct three GE LM6000 combustion turbines with a nameplate rating of 47 megawatts each at a site approximately 2 miles south of Sylvarena in Smith County, Mississippi, three GE 7EAs with a nameplate rating of 83.5 megawatts each at a site located approximately 6 miles east of Silver Creek, in Jefferson Davis County, Mississippi, and one GE 7EA at its existing Moselle Generating Plant which is located approximately 1 mile north of Moselle in Jones County, Mississippi.

Alternatives considered by RUS and South Mississippi Electric Power Association include: (a) No action, (b) purchased power, (c) load management and conservation of energy, (d) renewable energy, (e) combined cycle, and (f) various site locations.

An alternatives evaluation and siting study for the projects was submitted to RUS by South Mississippi Electric Power Association. The alternatives evaluation and siting study are available for public review at RUS in Room 2242, 1400 Independence Avenue, SW, Washington, DC, and at the headquarters of South Mississippi Electric Power Association, 7037 US Highway 49, Hattiesburg, Mississippi. This document will also be available at the Prentiss Public Library, Prentiss, Mississippi; the Evon A. Ford Library, 208 Spring Street, Taylorsville, Mississippi; the Floyd A. Robinson Memorial Library, 150 Main Street, Raleigh, Mississippi; the Laurel-Jones Library, 530 Commerce Street, Laurel, Mississippi; and Ellisville Public Library, 110 Court Street, Ellisville, Mississippi.

From information provided in the alternatives evaluation and site selection study, input that may be provided by government agencies, private organizations, and the public, South Mississippi Electric Power Association will have prepared an environmental analysis to be submitted to RUS for review. RUS will use the environmental analysis to determine the significance of the impacts of the projects and may adopt it as its environmental assessment of the projects. RUS' environmental assessment of the projects will be available for review and comment for 30 days.

Should RUS determine, based on the environmental assessment of the project, that the impacts of the construction and operation of the projects will not have a significant environmental impact, it will prepare a finding of no significant impact. Public notification of a finding of no significant impact will be published in the **Federal Register** and in newspapers with a circulation in the areas where the projects are proposed to be located.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by Council on Environmental Quality and RUS environmental policies and procedures.

Dated: July 12, 2001.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 01–17934 Filed 7–19–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

[I.D. 071701A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Dr. Nancy Foster Scholarship Program.

Form Number(s): CD–346.

OMB Approval Number: 0648–0432.

Type of Request: Regular submission.

Burden Hours: 3,517.

Number of Respondents: 2,000.

Average Hours Per Response: 4.75 hours for an application, 45 minutes for a letter of recommendation, 90 minutes for an annual report, 5 minutes for a ''no concurrent work'' statement, 45 minutes for a CD–346, and 1 hour for a biography/photograph submission.

Needs and Uses: The Dr. Nancy Foster Scholarship Program recognizes outstanding scholarship by providing financial support to graduate students pursuing masters and doctoral degrees in the areas of marine biology, oceanography, and maritime archaeology. Applicants must submit information that allows NOAA to make scholarship selections and those applicants selected to receive scholarships must submit additional information that enables NOAA to arrange funding and track their academic progress.

Affected Public: Individuals or households.

Frequency: One-time, annual.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–18203 Filed 7–19–01; 8:45 am]

BILLING CODE 3510–JT–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071701B]

Submission for OMB Review; Comment Request

AGENCY: National Oceanic and Atmospheric Administration (NOAA)

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Southeast Region Logbook Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648-0016.

Type of Request: Regular submission.

Burden Hours: 1,400.

Number of Respondents: 350.

Average Hours Per Response: 10 minutes per trip form, 30 minutes per annual form

Needs and Uses: Participants in the Atlantic snapper-grouper and mackerel

fisheries in the Southeast Region are currently required to submit catch and effort logbooks for their fishing trips. The NMFS proposes that fishermen also be required to submit information about dockside prices, trip operating costs, and annual fixed costs. The data will be used in analyses of the economic effects of proposed regulations.

Affected Public: Business and other for-profit organizations.

Frequency: By trip, annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897. Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–18204 Filed 7–19–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062701C]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of applications for scientific research permits.

SUMMARY: NMFS has received applications for Endangered Species Act (ESA) scientific research permits from: Bureau of Land Management (BLM) in Eugene, OR; Cascade General, Inc. (CGI) in Portland, OR; Western Washington University (WWU) in Bellingham, WA; Lower Willamette Group (LWG) in Portland, OR; Northwest Fisheries Science Center (NWFSC), NMFS in Seattle, WA; Weyerhaeuser in Federal Way, WA; King County Department of Transportation (KCDOT) in King County, WA; City of Bellingham, WA; Oregon State University (OSU) in Corvallis, OR; Oregon Metallurgical Corporation (OREMET) in Portland, OR; United States Forest Service (USFS) in Corvallis, OR; Port Blakely Tree Farms (PBF) in Tenino, WA; and United States Fish and Wildlife Service (USFWS) in Vancouver, WA.

DATES: Comments or requests for a public hearing on any of the new applications or the modification request must be received no later than 5 p.m. Pacific daylight time on August 20, 2001.

ADDRESSES: Written comments on the applications should be sent to Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503/230–5400). Comments may also be sent via fax to 503/230–5435. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Cherelle Blazer, Portland, OR, phone: 503/231–2001, fax: 503/230–5435, e-mail: *Cherelle.Blazer@noaa.gov*.

SUPPLEMENTARY INFORMATION: The following ESA-listed evolutionary significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Snake River (SR) fall-run, Threatened SR spring/summer-run, Endangered Upper Columbia River (UCR), Threatened Upper Willamette River (UWR), Threatened Lower Columbia River (LCR), Threatened Puget Sound (PS)

Steelhead (*O. mykiss*): Threatened Snake River Basin (SRB), Endangered UCR, Threatened Middle Columbia River (MCR), Threatened LCR, Threatened UWR

Chum salmon (*O. keta*): Threatened Columbia River (CR)

Sockeye salmon (*O. nerka*): Endangered SR

New Applications Received

BLM is seeking a 5–year permit (1256) to take adult and juvenile UWR chinook salmon and OC coho salmon in Wolf Creek, Siuslaw River, Esmond Creek Basin, North Creek, Pugh Creek, Bierce Creek, Siuslaw River mainstem, and Upper Lake Creek in OR. The purposes of the study are to: (1) collect data on fish abundance and presence, adult escapement, and habitat needs prior to stream enhancement; (2) evaluate habitat restoration projects, migration time, non-salmon species presence and smoltification size; and (3) perform watershed analysis. The study will benefit UWR chinook salmon and OC coho salmon by determining changes in fish habitat due to management projects as compared to natural fluctuation. BLM proposes to observe fish by snorkeling during habitat and spawning surveys, and capture (using backpack electrofishing, seining, dipnetting, and rotary trapping), handle, and release juvenile and adult salmonids. Some fish will be marked with a subcutaneous injection of colored dye using Panjet needles. BLM also requests juvenile fish indirect mortality associated with the study.

CGI is seeking a 3–year permit (1326) to take adult and juvenile UWR chinook salmon, LCR chinook salmon, UWR steelhead, and LCR steelhead associated with scientific research to be conducted at Swan Island in the Portland Harbor located in the lower Willamette River. The purpose of this study is to test a freshwater air screen for use in preventing or minimizing fish entry onto a floating dry dock facility. The research will benefit listed species by determining their presence and testing new methods of moving fish away from dry dock areas during operations thus providing useful information for protecting listed species at dry dock facilities. CGI proposes to capture (using boat electrofishing and intake porthole nets), anesthetize, identify, measure, check for marks, weigh, and release juvenile salmonids. Adult fish that may be encountered will not be netted. CGI also requests juvenile fish indirect mortality associated with the study.

WWU is seeking a 5–year permit (1327) to take adult and juvenile UWR chinook salmon and UWR steelhead on the Willamette and McKenzie Rivers. The purpose of this study is to identify and rank sources of stress in the watershed, create a valid process for differentiation between anthropogenic and natural impacts on streams used as receiving waters associated with pulp and paper mill operation, and make an ecological risk assessment specifically aimed at point-non-point source pollution in the Upper Willamette-Lower McKenzie watershed. The study will benefit UWR chinook salmon and UWR steelhead recovery through ecological assessment and stressor identification in the watershed. WWU proposes to capture (using boat electrofishing), identify, and release juvenile fish. No attempt will be made to net or capture adult listed fish. WWU also requests juvenile fish indirect mortality associated with the study.

LWG is seeking a 4–year permit (1328) to take adult and juvenile UWR chinook salmon, LCR chinook salmon, UWR steelhead, and LCR steelhead during scientific research efforts on the Lower Willamette River. The purpose of

the study is to investigate juvenile salmon residence time and distribution and use the data to determine potential exposure of listed fish to contaminated sediment associated with an EPA superfund project. The study will benefit threatened species in the Portland harbor by generating population distribution information that can be used to design a remediation program to minimize sediment impacts, and aid management of future development and conservation of valuable fish habitat. LWG proposes to capture (using boat electrofishing), handle, anesthetize, measure, check for marks and tags, and release juvenile salmonids. Adult fish that may be encountered will not be netted. LWG also requests juvenile fish indirect mortality associated with the study.

NWFSC is seeking a 5–year permit (1329) to take juvenile SR fall-run chinook salmon, SR spring/summer-run chinook salmon, UCR chinook salmon, UWR chinook salmon, LCR chinook salmon, SRB steelhead, UCR steelhead, MCR steelhead, UWR steelhead, LCR steelhead, CR chum salmon, and SR sockeye salmon in the Lower Columbia River estuary. The purpose of the study is to determine the presence and abundance of fall and spring chinook salmon, coho salmon, and chum salmon in the estuary and Lower Columbia River; determine the relationship between juvenile salmon and Lower Columbia River estuarine habitat; and obtain information about flow change, sediment input, and habitat availability for the development of a numerical model. The study will benefit listed salmonids by serving as the basis for estuarine restoration and preservation plans for endangered salmonid stocks. The NWFSC proposes to place beach seines at eight sampling sites near the Astoria Bridge and trapnets in four sites in Cathlamet Bay. NWFSC proposes to capture, anesthetize, scan for tags, measure, weigh, and release juvenile salmonids. Monthly up to ten fish of each species at each of the twelve sampling sites are proposed to be sacrificed for stomach content, scale, and otolith analysis.

Weyerhaeuser is seeking a 5–year permit (1330) to take juvenile LCR steelhead in Harrington Creek in the Toutle River Basin, WA. The purpose of the study is to increase understanding of the relationship between aquatic organisms and their habitat, determine how forest management and restoration influence the aquatic ecosystem, and produce reliable scientific data for the development of effective forest management practices that better protect aquatic resources. This research will benefit listed salmonids through data on the natural habitat recovery process and by identification of the consequences of various stressors to listed species. Weyerhaeuser proposes to observe fish during snorkeling surveys, capture (using backpack electrofishing), anesthetize, identify, measure, weigh, and release fish for data collection including water typing and population surveys. Weyerhaeuser also requests indirect mortality associated with this activity.

KCDOT is seeking a 5–year permit (1331) to take juvenile PS chinook salmon associated with road maintenance activities to be conducted in multiple river basins in WA. KCDOT proposes to temporary exclude aquatic life from maintenance/construction areas in addition to evaluating the effectiveness of stream, culvert replacement, wetlands, and riparian habitat projects. Maintenance activities are to replace or upgrade stream crossing to allow fish passage. The activities will benefit PS chinook salmon by providing and improving access into previously inaccessible stream reaches for all life stages. The road maintenance activities may also include habitat improvements such as riparian plantings and in-stream habitat structures. KCDOT proposes to capture (using backpack electrofishing, seines, fry traps, and dipnets), handle, and release juvenile PS chinook salmon. KCDOT also requests indirect mortality associated with the study.

The City of Bellingham is seeking a 3–year permit (1332) to take juvenile PS chinook salmon associated with scientific research to be conducted in the Nooksack River Basin of Whatcom County, WA. The purpose of the study is to gather information to prepare a Habitat Conservation Plan (HCP) addressing their diversion activities in the Nooksack River Basin. The proposed study will provide three types of information to help determine how flow volumes in the river affect the availability of habitat used by listed salmonids: (1) Fish distribution in the project area; (2) periodicity of fish occurrence in the project area; and (3) habitat use in the project area. The research will benefit PS chinook salmon by providing scientifically-sound, site-specific data that will enable the City of Bellingham to develop an HCP addressing water withdrawal operations and habitat conservation measures that will minimize or avoid incidental take of listed species. The City of Bellingham proposes to capture (using beach seines and fyke nets), handle, and release juvenile PS chinook salmon. The City of Bellingham also requests indirect mortality associated with the study.

OSU is seeking a 3–year permit (1333) to take adult and juvenile UWR chinook salmon, LCR chinook salmon, UWR steelhead, and LCR steelhead in the Willamette River, McKenzie River, and the Columbia River. The purpose of the study is to evaluate floodplain and riparian restoration, test the effectiveness of new assessment tools for conservation planning, and improve aquatic habitat. The study will benefit listed salmonids by helping to determine the actions needed to restore of ecological processes in salmon and steelhead habitat. OSU proposes to capture (using boat electrofishing), identify, measure, examine for abnormalities, and release juvenile fish. Adult fish that may be encountered will not be netted. OSU also requests juvenile fish indirect mortality associated with the study.

OREMET is seeking a 3–year permit (1334) to take juvenile UWR chinook salmon and UWR steelhead in the Calapooia River and Oak Creek tributaries to the Willamette River. The purpose of the study is to evaluate stream health and occurrence of juvenile listed salmonids in areas downstream from a titanium plant and to determine the effectiveness of wastewater treatment. The benefit of the study on listed salmonids is the continued treatment of effluent which provides a consistent perennial flow of water in Oak Creek. OREMET proposes to use backpack electrofishing to capture fish which will then be measured, identified, and released.

USFS is seeking a 5–year permit (1335) to take adult and juvenile CR chum salmon in three tributaries of the Columbia River in Washington state. The purpose of the study is to assess watershed conditions and limiting factors, and determine watershed health under the Northwest Forest Plan. The activities will benefit listed fish by providing the USFS with information to improve forest management. USFS proposes to capture (using backpack electrofishing), anesthetize, measure, and release fish. USFS also requests juvenile fish indirect mortality associated with the research.

PBF is seeking a 2–year permit (1336) to take juvenile UWR chinook salmon, UWR steelhead, LCR chinook salmon, LCR steelhead, and OC coho salmon in various lakes, rivers, and creeks in the Willamette and Columbia River systems and Oregon coastal drainages. The purpose of the study is to evaluate factors limiting fish distribution in streams owned by PBF and to determine water quality. Data collected will benefit

listed fish by being used to conserve and restore critical habitat. PBF proposes to capture (using backpack electrofishing and dipnetting), handle, and release juvenile fish.

OSU is seeking a 2–year permit (1337) to take adult and juvenile UWR chinook salmon and UWR steelhead in Rickreall Creek, OR. The purpose of the study is to assess the seasonal composition and distribution of fishes and determine associations of all life stages of fish with available habitat, level of disturbance, and hydrological patterns. The study will benefit listed salmonids by generating data that will aid in improved creek management. OSU proposes to capture (using dipnetting, beach seining, fyke and hoop netting, backpack electrofishing, angling, and trammel netting), handle, and release adult and juvenile fish. OSU also requests juvenile fish indirect mortality associated with the research.

USFWS is seeking a 5–year permit (1338) to take adult and juvenile LCR chinook salmon, LCR steelhead, and CR chum salmon in Hardy Springs, Hamilton Springs, and the mainstem Columbia River. The purposes of the study are to: (1) examine factors limiting chum salmon production, (2) enhance and restore chum salmon production, (3) evaluate nearby tributaries for restoration, and (4) evaluate the relationship between mainstem Columbia River and tributary chum salmon populations. The study will benefit listed chum salmon by providing information on their freshwater life history that can be used in Columbia River water management and recovery planning. Adult listed fish are proposed to be captured (by seine, weir, or tangle net), anesthetized, bio-sampled, marked with a jaw tag or opercle punch, radio tagged, and released. Juvenile listed fish are proposed to be captured (by fyke net, weir, or screw trap), marked using a photonic dye injector or Bismark Brown Y, and released. USFWS also requests adult and juvenile fish indirect mortality associated with the study.

Dated: July 16, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–18205 Filed 7–19–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071201B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of applications for scientific research permits.

SUMMARY: NMFS has received applications for Endangered Species Act (ESA) scientific research permits from the Columbia River Inter-Tribal Fish Commission at Portland, OR (CRITFC); Oregon State University at Corvallis, OR (OSU); the Shoshone-Bannock Tribes at Fort Hall, ID (SBT); Gary Thorgaard of the School of Biological Sciences, Washington State University at Pullman, WA (WSU); the Thompson Creek Mining Company at Challis, ID (TCM); and has received an application from the Oregon Department of Environmental Quality at Portland, OR (ODEQ) for modification 1 to scientific research permit 1205.

DATES: Comments or requests for a public hearing on any of the new applications or the modification request must be received no later than 5 p.m. Pacific daylight time on August 20, 2001.

ADDRESSES: Written comments and requests for copies of the permit applications should be sent to Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503/230–5400). Comments may also be sent via fax to 503/230–5435. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Robert Koch, Portland, OR, phone: 503–230–5424, Fax: 503–230–5435, e-mail: *robert.koch@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Chinook salmon (*O. tshawytscha*): threatened, naturally produced and artificially propagated, Snake River (SnR) spring/summer; threatened SnR fall.

Steelhead (*O. mykiss*): threatened SnR, threatened middle Columbia River (MCR).

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River (SnR).

New Applications Received

CRITFC requests a 5–year permit (1339) for annual takes of adult, threatened, SnR steelhead and adult, threatened, SnR spring/summer chinook salmon associated with scientific research to be conducted in the following tributaries of the Imnaha River in OR: Cow, Lightning, Horse, Big Sheep, Camp, Little Sheep, Freezeout, Grouse, Crazyman, and Gumboot Creeks. The purpose of the research is to acquire information on the status (escapement abundance, genetic structure, life history traits) of steelhead in the Imnaha River Basin. The research will benefit the ESA-listed species by providing information that fisheries managers can use to determine if recovery actions are increasing wild and natural Snake River salmonid populations. Establishing baseline information on steelhead population status in the Imnaha River Basin will aid in guiding future management actions. ESA-listed adult salmon and steelhead are proposed to be collected using temporary/portable picket weirs. Non-target species that are collected (chinook salmon) are proposed to be measured and released. ESA-listed adult steelhead that are collected are proposed to be sampled for biological information, sampled for fin tissues and scales, marked with opercular punches, tagged with Tyvek disc tags, and released or examined for opercular punches and Tyvek disc tags, sampled for biological information, and released. ESA-listed adult fish indirect mortalities associated with the research are also requested. ESA-listed adult fish carcasses are also proposed to be collected and sampled for tissues and/or scales and biological information.

OSU requests a 1–year permit (1340) for takes of adult and juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; adult and juvenile, threatened, SnR steelhead; and adult and juvenile, threatened, MCR steelhead associated with research to be conducted in tributaries of the Imnaha River, the Snake River, Joseph Creek, the Grande Ronde River, and the John Day River in OR. The research is designed to determine how salmonid fishes respond to riparian diversity and how riparian diversity changes over time. The research will build a framework for designing riparian restoration programs in northeast

Oregon. The researchers will survey both in-stream and riparian zone characteristics where riparian litter, terrestrial insects, aquatic insects, and fish will be quantified. ESA-listed adult and juvenile salmon and steelhead are proposed to be observed/harassed during snorkel surveys. In addition, ESA-listed adult and juvenile steelhead are proposed to be captured with hook-and-line with barbless flies, sampled for biological information, sampled for stomach contents, and released. Any ESA-listed juvenile chinook salmon captured using hook-and-line will be immediately released. ESA-listed fish indirect mortalities associated with the research are also requested.

SBT requests a 5–year permit (1341) for annual takes of juvenile, endangered, SnR sockeye salmon associated with a study designed to evaluate the annual sockeye salmon smolt emigration from Pettit and Alturas Lakes in ID. The information is needed to estimate overwinter survival, downstream migration survival, and downstream migration timing. The research will also allow SBT researchers to evaluate various release strategies and to calculate smolt-to-adult return rates. The proposed research will benefit the species by providing managers with information on the relative success of the Pettit and Alturas Lakes sockeye salmon reintroduction program. The research will also provide information that resource managers can use to make decisions on future releases of sockeye salmon from the Idaho Department of Fish and Game's captive broodstock program in areas where sockeye salmon have been extirpated. Sockeye salmon smolts are proposed to be captured using a rotary screw trap on Alturas Lake Creek and a weir on Pettit Lake Creek. After being captured, the ESA-listed sockeye salmon juveniles are proposed to be sampled for biological information and released or tagged with passive integrated transponders and released. In addition, to determine trap efficiencies, a portion of the ESA-listed juvenile sockeye salmon to be captured are proposed to be marked with a small cut on the caudal fin, released upstream of the traps, captured at the traps a second time, inspected for the caudal fin mark, and released. Juvenile, threatened, naturally produced, SnR spring/summer chinook salmon are also proposed to be captured at the Alturas Lake location, sampled for biological information, and released during the research effort directed at sockeye salmon. ESA-listed juvenile fish indirect mortalities associated with the research are also requested. Takes of ESA-listed species associated with SBT's research activities were previously authorized under scientific research permit 998 which expired on December 31, 2000.

Gary Thorgaard of the School of Biological Sciences, WSU requests a 3–year permit (1342) for a research project involving the use of small quantities of sperm collected from adult, threatened, SnR spring/summer chinook salmon and adult, threatened, SnR steelhead. The objective of the research is to assess the impact of hatchery rearing on the genetic makeup of salmonid fishes, which may in turn influence their behavior, physiology, and ability to survive in nature. The research seeks to determine the extent to which wild and hatchery salmon and steelhead may differ in their behavioral and physiological responses. If differences are detected, it is possible that hatchery rearing methods could be adjusted to reduce those differences over time by altering selection patterns in the hatcheries. Hybrid fish are proposed to be produced in a laboratory setting using ESA-listed fish sperm and eggs acquired from non-listed hatchery fish. The hybrid fish are proposed to be reared to the parr life stage; subjected to standardized tests designed to analyze the behavioral, physiological, and genetic changes that occur during domestication; and euthanized at the completion of the experiment. The behavioral and physiological traits of the hybrid fish will then be compared to those of hatchery fish produced using the same eggs. Dr. Thorgaard proposes to acquire the ESA-listed fish sperm to be used for the experiment from Nez Perce Tribe biologists, who are authorized to collect male gametes from ESA-listed salmon and steelhead for cryopreservation purposes under a separate authorization issued to the Columbia River Inter-Tribal Fish Commission.

TCM requests a 5–year permit (1343) for annual takes of juvenile, threatened, naturally produced, SnR spring/summer chinook salmon and juvenile, threatened, SnR steelhead associated with research designed to monitor the aquatic fish populations in the Thompson Creek and Squaw Creek drainages in the vicinity of Thompson Creek Mine. Thompson Creek Mine is a large, open pit molybdenum mine operation located in the Salmon River subbasin, Custer County, Idaho. The mine currently discharges runoff into Thompson and Squaw Creeks, tributaries to the Salmon River. Annual biological monitoring is proposed to determine the effects of mine operations on the aquatic life in Thompson and Squaw Creeks. The monitoring is required by the Idaho Department of Environmental Quality and the U.S. Environmental Protection Agency under a National Pollutant Discharge Elimination System permit. The biomonitoring project will benefit all aquatic species, including chinook salmon and steelhead, in that annual monitoring will detect any adverse impacts to the aquatic species as a result of mining operations. ESA-listed juvenile salmon and steelhead are proposed to be observed/harassed during snorkel surveys. ESA-listed juvenile fish are also proposed to be captured using electrofishing, sampled for biological information, and released. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

Modification Request Received

ODEQ requests modification 1 to scientific research permit 1205. Permit 1205 authorizes ODEQ an annual take of juvenile, threatened, Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*) associated with research designed to assess the condition of randomly selected streams in southwestern Oregon. The research involves collecting samples or data on a range of parameters including benthic macroinvertebrates, periphyton, non-native and invasive riparian plant species, chemical water quality, bacteriological water quality, stream habitat condition, fish and amphibian assemblages, and water temperature. ODEQ's research is coordinated with the U.S. Environmental Protection Agency and is mandated by the Clean Water Act. For modification 1, ODEQ requests annual takes of ESA-listed Snake River salmon and steelhead juveniles associated with an expansion of the research effort to the Snake River Basin. ESA-listed juvenile salmon and steelhead are proposed to be captured using electrofishing, examined, measured, and released. ESA-listed juvenile fish indirect mortalities are also requested. Modification 1 is requested to be valid for the duration of the permit which expires on December 31, 2002.

Dated: July 16, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–18206 Filed 7–19–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

July 17, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 20, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 66 FR 2412, published on January 11, 2001.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 17, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 8, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on July 20, 2001, you are directed to adjust the limits for the following categories, as provided for in the agreement between the Governments of the United States and Cambodia:

Category	Adjusted twelve-month limit [1]
331/631	990,093 dozen pairs.
334/634	208,852 dozen.
335/635	83,989 dozen.
338/339	3,071,350 dozen.
340/640	969,105 dozen.
345	121,461 dozen.
347/348/647/648	3,685,620 dozen.
352/652	494,833 dozen.
438	100,127 dozen.
445/446	129,043 dozen.
638/639	1,105,686 dozen.
645/646	260,743 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
J. Hayden Boyd,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–18184 Filed 7–19–01; 8:45 a.m.

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 20, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC. 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 16, 2001.

William Burrow,

Acting Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Application for Ability to Benefit Testing Approval.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 150,090.

Burden Hours: 77,040.

Abstract: The Secretary will publish a list of approved tests which can be used by postsecondary educational institutions to establish the ability to benefit for a student who does not have a high school diploma or its equivalent for Student Financial Assistance Programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–18147 Filed 7–19–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–147–B and EA–148–B]

Applications to Export Electric Energy; Aquila Energy Marketing Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: Under separate applications, Aquila Energy Marketing Corporation (''AEM'') has applied for renewal of its authority to transmit electric energy from the United States to Mexico and to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 6, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 19, 1997, in Docket EA–147, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized AEM to transmit electric energy from the United States to Mexico using the international electric transmission facilities of San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. That two-year authorization was renewed on August 11, 1999, in Docket EA–147–A and will expire on August 11, 2001.

On August 13, 1997, in Docket EA–148, FE authorized AEM to transmit electric energy from the United States to Canada using the international electric transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, Detroit Edison, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. That two-year authorization was renewed on August 11, 1999, in Docket EA–148–A and will expire on August 11, 2001. On July 5, 2001, AEM filed applications with FE for renewal of both export authorizations for a term of two years or such other term as DOE may deem appropriate. DOE will consider renewal of the authorization for a period of five years.

DOE notes that the circumstances described in these applications are virtually identical to those for which export authority had previously been granted in FE Orders EA–147 and EA–148. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Dockets EA–147 and EA–148 proceedings.

In its applications, AEM requested expedited processing of this renewal application so that there would be no gap in its authority to export and it may continue exporting electric energy to Canada and to Mexico without interruption. Accordingly, DOE has shortened the comment period to 15 days.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the AEM application to export electric energy to Mexico should be clearly marked with Docket EA–147–B. Comments on the AEM application to export electric energy to Canada should be clearly marked with Docket EA–148–B. Additional copies are to be filed directly with David Stevenson, Aquila Energy Marketing Corporation, 1100 Walnut Street, Suite 3300, Kansas City, Missouri 64106 AND Kathryn A. Flaherty, Attorney for Aquila Energy Marketing Corporation, Blackwell Sanders Peper Martin, 13710 FNB Parkway, Suite 200, Omaha, Nebraska 68154.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' then ''Pending Procedures'' from the options menus.

Issued in Washington, DC, on July 16, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–18165 Filed 7–19–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–484–000]

Aera Energy LLC, Amoco Production et al.; Complainants v. El Paso Natural Gas Company; Respondent; Notice of Complaint

July 16, 2001.

Take notice that on July 13, 2001, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission) 18 CFR 385.206, Aera Energy LLC, Amoco Production Company, BP Energy Company, Burlington Resources Oil & Gas Company LP, Conoco Inc., Coral Energy Resources LP, ONEOK Energy Marketing & Trading Company, L.P., Pacific Gas and Electric Company, Panda Gila River L.P., Public Utilities Commission of the State of California, Southern California Edison Company, Southern California Gas Company and Texaco Natural Gas Inc. (Joint Complainants) filed a complaint under Section 5 of the Natural Gas Act, against El Paso Natural Gas Company (El Paso).

Complainants allege that El Paso's over-selling of firm capacity in conjunction with unlimited growth of demands by its ''full requirements'' customers, results in unjust, unreasonable and unduly discriminatory services on the El Paso system, in violation of Sections 5 and 7 of the Natural Gas Act, the Commission's regulations thereunder, and El Paso's obligations under the 1996 rate case settlement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before August 2, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before August 2, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–18146 Filed 7–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1685–001, et al.]

Portland General Electric Company, et al.; Electric Rate and Corporate Regulation Filings

July 16, 2001.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER01–1685–001]

Take notice that on July 11, 2001, Portland General Electric Company (PGE) filed substitute tariff sheets in its Open Access Transmission Tariff in compliance with the Commission's June 1, 2001 order in the above-referenced docket. Portland General Electric Co., 95 FERC 61,341 (2001). PGE requests that the Commission make the revised tariff sheets effective as of April 2, 2001.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Oklahoma

[Docket No. ER01–1790–001]

Take notice that on July 11, 2001, Public Service Company of Oklahoma (PSO) tendered for filing in compliance with the Commission's letter order of June 12, 2001, a Supplement to the Interconnection Agreement with Calpine Oneta Power, L.P. AEP requests an effective date of June 12, 2001. Copies of PSO's filing has been served upon the Calpine and the Oklahoma Corporation Commission.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Gray County Wind Energy, LLC

[Docket No. ER01–1972–001]

Take notice that on July 11, 2001, Gray County Wind Energy, LLC (Gray County) tendered for filing designations for two long term power purchase agreements and revised tariff sheets to Gray County's FERC Electric Tariff, Original Volume No.1 in compliance with the Letter Order issued on July 3, 2001 in this Docket No. ER01–1972–000. The tariff revision incorporates a prohibition on power purchases from any affiliated public utility with a franchised service territory absent a rate filing under Section 205 of the Federal Power Act.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, (Allegheny Power)

[Docket No. ER00–2309–002]

Take notice that on July 10, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (AE Supply), The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed First Revised Sheet No. 7 to AE Supply's First Revised Rate Schedule FERC No. 3 in accordance with the Commission's Order of July 2, 2001 at Docket No. ER00–2309–001, 96 FERC 61,002 (2001).

Copies of the filing have been provided to the customer, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment date: July 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Pro-Energy Development LLC

[Docket No. ER01–2463–000]

Take notice that on June 29, 2001, Pro Energy Development LLC petitioned the Commission for acceptance of Pro Energy Development LLC Rate Schedule FERC No. 1; the granting of certain blanket approvals; including the authority to sell electricity at market based rates and the waiver of certain Commission regulations.

Pro Energy Development LLC intends to engage in wholesale electric power and energy purchases and sales as a marketer. Pro Energy Development LLC is not in the business of generating or transmitting electric power.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. American Transmission Company LLC

[Docket No. ER01–2560–000]

Take notice that on July 11, 2001, American Transmission Company LLC (ATCLLC) tendered for filing a Firm and Non-Firm Point-to-Point Service Agreement between ATCLLC and Calpine Energy Services, L.P. ATCLLC requests an effective date of June 29, 2001.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Empire Limited Partnership #2

[Docket No. ER01–2561–000]

Take notice that Northeast Empire Limited Partnership #2 (NELP#2), on July 11, 2001, tendered for filing an application for approval of market-based rate schedules to sell capacity, energy and ancillary services to WPS Energy Services, Inc. pursuant to Section 205 of the Federal Power Act.

NELP#2 requests that the Commission accept these Rate Schedules for filing by August 10, 2001.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Competitive Energy Services, LLC

[Docket No. ER01–2562–000]

Take notice that on July 11, 2001, Competitive Energy Services, LLC (CES) petitioned the Commission for acceptance of CES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

CES intends to engage in wholesale electric power and energy purchases and sales as a marketer. CES is not in the business of generating or transmitting electric power.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Jackson County Power, LLC

[Docket No. ER01–2563–000]

Take notice that on July 11, 2001, Jackson County Power, LLC (Jackson County), an electric power developer organized under the laws of Delaware, petitioned the Commission for acceptance of its market-based rate tariff, waiver of certain requirements under Subparts B and C of Part 35 of the Commission's regulations, and preapproval of transactions under Part 34 of the regulations. Jackson County is developing an 1,072 MW (summer rated) gas fired generating facility in Jackson County, Ohio, six miles south of Jackson, Ohio.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER01–2564–000]

Take notice that on July 11, 2001, the Arizona Public Service Company tendered for filing proposed revisions to Arizona Public Service Company's fuel adjustment clause contained in certain wholesale power agreements on file with the Commission.

A copy of this filing has been served on all parties on the service list.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER01–2565–000]

Take notice that on July 11, 2001, Kentucky Power Company tendered for filing a letter agreement with Foothills Generating, L.L.C. AEP requests an effective date of June 20, 2001. Copies of Kentucky Power Company's filing has been served upon the Kentucky Public Service Commission.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of New Mexico

[Docket No. ER01–2566–000]

Take notice that on July 11, 2001, Public Service Company of New Mexico (PNM) submitted for filing an executed copy of a Wholesale Requirements Power Sale and Services Agreement (Agreement) dated June 29, 2001 (the requested effective date for the Agreement), between PNM and Texas-New Mexico Power Company (TNMP). The Agreement, which runs from July 1, 2001 through December 31, 2006, and which is being filed as a Service Agreement under PNM's FERC Electric Tariff, First Revised Volume No. 3. Beginning January 1, 2003, and through the remainder of the Agreement, PNM will be TNMP's sole provider of resources to serve its New Mexico retail load requirements. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of this filing have been served upon TNMP and the New Mexico Public Regulation Commission.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. PPL Large Scale Distributed Generation II, LLC.

[Docket No. EL01–102–000]

Take notice that on July 12, 2001, PPL Large Scale Distributed Generation II, LLC (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) a petition for declaratory order disclaiming jurisdiction.

The Applicant intends to develop certain electric generating facilities to be located in Illinois, Arizona and Pennsylvania. Applicant is seeking a disclaimer of jurisdiction in connection with a lease financing involving those facilities.

Comment date: August 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Midwest Energy, Inc.

[Docket No. ER01–2461–000]

Take notice that on June 28, 2001, Midwest Energy, Inc. (Midwest) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Transaction Service Agreement between Midwest and City of Colby, Kansas.

Midwest states that the agreement was served on the Kansas Corporation Commission.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated By the California Independent System Operator Corporation and the California Power Exchange, Respondents

[Docket No. EL00–95–040]

Investigation of Practices of the California Independent System Operator and the California Power Exchange

[Docket No. EL00–98–038]

Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services In the Western Systems Coordinating Council

[Docket No. EL01–68–003]

Take notice that on July 10, 2001, the California Independent System Operator Corporation (ISO) tendered for filing changes to the ISO Tariff to comply with the Commission's June 19, 2001, order in the above-captioned proceeding, San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al., 95 FERC ¶61,418 (2001). The ISO also tendered for filing changes to the ISO Tariff to comply with the Commission's May 25, 2001, order in the above-captioned proceeding, San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al., 95 FERC ¶61,275 (2001) and to reflect the rejection of Amendment No. 31 to the ISO Tariff in the Commission's November 1, 2000, order in the above-captioned proceeding, San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al., 93 FERC ¶61,121 (2000). The ISO states that this filing has been served upon all parties in this proceeding.

Comment date: August 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docketi'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–18145 Filed 7–19–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7013–1]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed Partial Consent Decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency (''EPA'') on June 29, 2001, to address a lawsuit filed by the Natural Resources Defense Council, Environmental Defense Fund, Conservation Law Foundation, Clean Air Council, Natural Resources Council of Maine, and Sierra Club (collectively referred to as ''NRDC''). This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), claims EPA failed to meet a mandatory deadline under section 110(c) of the Act, 42 U.S.C. 7410(c), to promulgate federal implementation plans (''FIPs'') establishing attainment demonstrations for certain ozone nonattainment areas classified as serious or severe and located in the eastern part of the United States and to impose sanctions in those areas. *NRDC* v. *EPA,* No. 1:99CV02976 (D.D.C.).

DATES: Written comments on the proposed consent decree must be received by August 20, 2001.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed Partial Consent Decree are available from Phyllis J. Cochran, (202) 564–5566. A copy of the proposed Partial Consent Decree was lodged with the Clerk of the United States District Court for the District of Columbia on June 29, 2001.

SUPPLEMENTARY INFORMATION: In its complaint, NRDC alleges that EPA has a mandatory duty to promulgate FIPs and impose sanctions on 13 nonattainment areas located in 14 States and the District of Columbia. On June 12, 2000, EPA and NRDC filed with the court a Partial Consent Decree that addressed 9 of the 13 areas (''June 2000 Decree''). *See also* 64 FR 71453 (Dec. 21, 1999) (notice under 113(g) of Partial Consent Decree). At that time, three of the areas that were the subject of NRDC's complaint were not subject to the 1-hour ozone standard pursuant to a determination by EPA under 40 CFR 50.9(b) that the areas had attained the 1-hour standard and that the 1-hour standard no longer applied. *See* 64 FR 30911 (June 9, 1999). These three areas are the Boston-Lawrence-Worcester nonattainment area, located in Massachusetts and New Hampshire; the Portsmouth-Dover-Rochester nonattainment area, located in New Hampshire; and the Providence nonattainment area, Rhode Island. However, at the time the June 2000 Decree was entered by the court, EPA had proposed to reinstate the applicability of the 1-hour standard, including designations, in those areas. 64 FR 57424 (Oct. 25, 1999) (preamble language) and 64 FR 60477 (Nov. 5, 1999) (regulatory text). Paragraph 5a of the June 2000 Decree provided that the parties agreed to stay the case with respect to those three areas and provided that the stay would expire if any of certain events occurred, including a final action by EPA reinstating the 1-hour standard and the associated 1-hour designations in those areas. On July 20, 2000, EPA took final action reinstating the 1-hour standard and the associated designations in all areas for which EPA had previously determined that standard did not apply. Subsequently, the parties negotiated the proposed Partial Consent Decree to address NRDC's claims for these three areas.

The three areas addressed in the proposed Partial Consent Decree are all currently designated nonattainment but, based on monitoring data from 1998–2000, have air quality meeting the 1-hour standard. The proposed Partial Consent Decree provides that EPA will promulgate a full attainment demonstration FIP for each area if a violation of the 1-hour ozone standard occurs in the future in that area. See paragraphs 2 and 3. For the Boston and Portsmouth areas, EPA's obligation to propose a FIP would ripen in September of the year following the year in which the violation occurs and EPA's obligation to finalize a FIP would ripen 9 months later—the following June. Because EPA currently does not have an attainment demonstration submission for the Providence area, the proposed Partial Consent Decree provides an additional six months for EPA to propose a FIP. Thus, EPA's obligation to propose a FIP for Providence would ripen in March of the second year following the violation and EPA's obligation to finalize a FIP would ripen 9 months later—in December of that same year.

Paragraph 4 of the proposed Partial Consent Decree sets forth the three circumstances under which EPA's obligation to propose or promulgate a FIP will be extinguished: (1) The date that EPA fully approves an attainment demonstration SIP for an area; (2) the date EPA redesignates an area from nonattainment to attainment; or (3) once EPA has approved a SIP or promulgated a FIP under the NO_X SIP Call for each upwind state for an area, the latest source compliance date in an approved SIP or promulgated FIP.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Partial Consent Decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Partial Consent Decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the final Partial Consent Decree will be entered with the court and will establish deadlines for promulgation of FIPs consistent with the conditions of the Partial Consent Decree.

Dated: July 9, 2001.

John T. Hannon,

Acting Associate General Counsel.

[FR Doc. 01–18196 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6620–2]

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.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–E65056–FL Rating LO, Ocklawaha River Restoration Project, Continued Occupation of Florida National Forest Lands, Portions of Kirkpatrick Dam, Rodman Reservoir and Eureka Lock and Dam in Conjunction with Partial Restoration of the Ocklawaha River, Operation and Maintenance, Permit Issuance and Implementation, Marion and Putnam Counties, FL.

Summary: EPA has not identified any potential environmental impacts requiring substantive changes to the proposal. The temporary impacts caused by the release of nutrients should not be a factor in delaying project implementation.

ERP No. D–AFS–J65343–MT Rating EC2, North Elkhorns Vegetation Project, Elkhorn Wildlife Management Unit, Implementation, Strawberry Butte Area, Helena National Forest, Jefferson County MT.

Summary: EPA expressed environmental concerns with the limited range of alternatives evaluated and asked for additional explanation and additional alternatives analysis. Of the two action alternatives presented EPA favored logging during winter on snow to reduce erosion and sediment transport. EPA requests that the final EIS provide information regarding impacts to wetlands and air quality impacts to fully assess and mitigate all potential impacts.

ERP No. D–AFS–L65382–ID Rating NS, Meadow Face Stewardship Pilot Project, Implementation, Nez Perce National Forest, Clearwater Ranger District, Idaho County, ID.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based upon this screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D–BLM–K65340–NV Rating EC2, Reno Clay Plant Project, Construct and Operate an Open-Pit Clay Mine and Ore Processing Facility, Plan-of-Operations, Oil-Dri Corporation of Nevada, Hungry Valley, Washoe County, NV.

Summary: EPA expressed concerns regarding potential impacts to air and water quality, soils, vegetation, wildlife, and cultural resources; and recommended that the FEIS include additional information regarding these impacts, mitigation measures to reduce or offset impacts, and bonding.

ERP No. D–FRC–C05147–NY Rating EC2, Upper Hudson River Hydroelectric Project, Relicensing the E.J. West Project (FERC–No. 2318–002), Stewart Bridge Project (FERC–No. 2047–004), Hudson River Project (FERC–No. 2482–014) and Feeder Dam Hydroelectric Project (FERC–No. 2554–003), Saratoga, Fulton and Hamilton Counties, NY.

Summary: EPA expressed concerns regarding potential impacts to aquatic resources and wetlands. EPA also requested additional information on alternatives and the consultation process with tribal nations.

ERP No. D–HUD–K81026–CA Rating EC2, West Hollywood Gateway Project, Constructing from Santa Monica Boulevard, Romaine Street LaBrea Avenue and Formosa Avenue, Public/Private Partnership, City of West Hollywood, Los Angeles County, CA.

Summary: EPA expressed concerns, and requested additional information regarding: impacts to traffic and air quality in the region, proposed traffic mitigation measures and environmental justice impacts.

ERP No. D–USA–E11049–KY Rating EC1, U.S. Army Armor Center and Fort Knox Northern Training Complex, Construction and Operation of a Multi-Purpose Digital Training Ranger and a Series of Maneuver Areas, Drop and Landing Zones, Fort Knox, KY.

Summary: Environmental concerns result from off- and on-post impacts attendant to the increased intensity/duration of proposed training upgrades. Army will have to work with local entities to mitigate adverse effects on encroaching residential/commercial development.

ERP No. D2–AFS–J65143–00 Rating E02, Flat Canyon Federal Coal Lease Tract (UTU–77114), Application for Leasing, Manit-La Sal National Forest, Ferron-Price Ranger District, Sanpete and Emery Counties, UT.

Summary: EPA expressed environmental objections with the proposed coal mine expansion which is expected to adversely impact current water quality problems of high salinity, phosphorus and effluent toxicity. Depending on the selected discharge location, the expansion may expand the area of water quality problems into a relatively pristine watershed. Subsidence from the underground mine may also adversely affect fen wetlands and riparian habitat.

Final EISs

ERP No. F–AFS–F61020–MN Boundary Waters Canoe Area Wilderness Fuel Treatment, Implementation, Superior National Forest, Cook, Lake and St. Louis, MN.

Summary: The USFS addressed EPA's concerns in a clearly written FEIS. EPA concurs with the USFS selection of Modified Alternative B in implementing controlled burns in the blowdown area to reduce the risk of wildfires and protect public safety.

ERP No. F–AFS–J65324–WY State of Wyoming School Section 16 T.12N., R.83W., 6th P.M., Issuing a Forest Road Special-Use-Permit for Access, Medicine Bow-Routt National Forests, Brush Creek/Hayden Ranger District, Carbon County, WY.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–K65230–CA Fuels Reduction for Community Protection Phase 1 Project on the Six Rivers National Forest, Proposes to Reduce Fuels High Severity Burned Stands, Lower Trinity Ranger District, Humboldt and Trinity Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–K65359–00 Northern Sierra Amendment to the Toiyabe Land and Resource Management, To Unify and Revise Management Direction, Humboldt-Toiyabe National Forest, Carson Ranger District, Stanislaus National Forest, Lake Tahoe Basin Management Unit, Douglas and Washoe Counties, NV and Alpine and Toulomne Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65370–OR South Bend Weigh and Safety Station Establishment, Special Use Permit for Construction, Maintenance and Operation, Deschute National Forest Lands along US 97 near the Newberry

National Volcanic Monument, Deschutes County, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–K65209–00 Death Valley National Park General Management Plan, Implementation, Mojave Desert, Inyo and San Bernardino Counties, CA and Nye and Esmeralda Counties, NV.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–K65212–CA Mojave National Preserve General Management Plan, Implementation, San Bernardino County, CA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: July 17, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–18201 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6620–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency

Office of FederalActivities, General Information (202)564–7167 OR www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements filed July 9, 2001 Through July 13, 2001 pursuant to 40 CFR 1506.9.

EIS No. 010252, Final EIS, USA, AZ, Yuma Proving Ground Multipurpose Installation, Diversification of Mission and Changes to Land Use, NPDES General Permit and COE Section 404 Permit, Yuma and La Pas Counties, AZ, Wait Period Ends: August 20, 2001, Contact: Junior D. Kerns (520) 328–2148.

EIS No. 010254, Draft EIS, AFS, MT, Gold/Boulder/Sullivan (GBS), Implementation of Timber Harvest and Associated Activities Prescribed Burning, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT, Comment Period Ends: September 4, 2001, Contact: Ron Komac (406) 296–2536.

EIS No. 010255, Final EIS, FRC, FL, MS, AL, Florida Gas Transmission (FGT) Phase V Expansion Project, FGT Natural Gas Pipeline and Associated Above Ground Facilities, Construction and Operation, Approvals and Permit Issuance, Several Counties of FL, AL and MS , Wait Period Ends: August 20, 2001, Contact: David Boergers (202) 208–2088.

EIS No. 010256, Draft EIS, COE, NJ, New Jersey Shore Protection Study, To Determine a Feasible Hurricane and Storm Damage Reduction Plan, between Manasquan Inlet to Barnegat Inlet, Boroughs of Point Pleasant Beach, Bay Head, Mantoloking Lavallette, Seaside Heights and Seaside Park, and Townships of Buck, Dover and Berkeley, NJ, Comment Period Ends: September 4, 2001, Contact: Beth Brandreth (215) 656–6558.

EIS No. 010258, Final EIS, GSA, DC, Bureau of Alcohol, Tobacco and Firearms National Headquarters Building, Site Acquisition, Design and Construction, Washington, D.C., Wait Period Ends: August 27, 2001, Contact: Dawud Abdur-Rahman (202) 260–3368.

EIS No. 010259, Draft EIS, GSA, MD, Suitland Federal Center, Construction and Operation of a 226-acre Federal Employment Center, Programmatic Development Plan and Phase I Implementation, Prince George's County, MD, Comment Period Ends: September 4, 2001, Contact: Jag Bhargava (202) 708–6944.

EIS No. 010260, SECOND FINAL SUPPLE, DOE, SC, Savannah River Site Salt Processing Alternatives, Evaluation for Separating High-Activity and Low-Activity Fractions of Liquid High-Level Radio-active Waste and Potential Environmental Impacts of Alternatives to the In-Tank-Precipitation Process (ITP), Aiken and Barnwell Counties, SC, Wait Period Ends: August 20, 2001, Contact: Andrew R. Grainger (800) 881–7292. This document is available on the Internet at tis.eh.doe.gov/nepa/docs/docs.htm.

EIS No. 010261, FINAL EIS, IBR, CA, Colusa Basin Drainage District, Developing an Integrated Resource Management Program for the Control of Flooding, Glenn, Colusa and Yolo Counties, CA, Wait Period Ends: August 20, 2001, Contact: Russ Smith (530) 275–1554.

Amended Notices

EIS No. 010153, Draft Supplement, BLM, MT, Zortman and Landusky Mines Reclamation Plan, Modifications and Mine Life Extensions, Updated Information To Analyze Additional Reclamation Alternatives, Approval of Mine Operation, Mine Reclamation and COE Section 404 Permit, Little Rocky Mountains, Philip County, MT, Comment Period Ends: August 9, 2001, Contact: Scott Haight (406) 538–1930. Revision of FR Notice Published on 5/11/2001: CEQ Review Period Ending on 7/9/2001 has been Extended to 8/9/2001.

EIS No. 010188, DRAFT EIS, AFS, MT, Burned Area Recovery, Proposal to Reduce Fuels, Improve Watershed Conditions and Reforest Burned Lands, Sula, Darby, West Fork and Stevensville Ranger Districts, Bitterroot National Forest, Ravalli County, MT , Comment Period Ends: July 31, 2001, Contact: Craig Bobzien (406) 363–7100. Revision of FR Notice Published on 6/1/2001: CEQ Review Period Ending 7/16/2001 has been Extended to 7/31/2001.

Dated: July 17, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–18202 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7015–5]

Integrated Risk Information System (IRIS); Notice; Request for Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; administrative changes in the Integrated Risk Information System.

SUMMARY: IRIS is an EPA data base that contains EPA scientific consensus positions on human health effects that may result from chronic exposure to chemical substances in the environment. In this action, EPA is announcing an upcoming change to the location and phone number of EPA's contractor-operated IRIS hotline and publically-accessible records center, and a redesign of the IRIS web site, available for public view and comment.

DATES: Comments should be submitted by September 18, 2001.

ADDRESSES: Comments on the redesigned web site should be made to the IRIS webmaster via the questionnaire on line at *www.epa.gov/iris/whatsnew.htm.* Comments on the web site may also be mailed to the IRIS Submission Desk, c/o Courtney R. Johnson, U.S. Environmental Protection Agency, (8601D), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information on the IRIS program, contact Amy Mills (Mail Code 8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or call

(202) 564–3204, or send electronic mail inquiries to *mills.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to chemical substances found in the environment. IRIS currently provides health effects information on over 500 specific chemical substances. A companion **Federal Register** notice today provides additional background on the IRIS program and data base, and requests public comment on which substances to add or update.

EPA has provided outreach to facilitate the use and understanding of the data base. These efforts include a telephone hotline (513–569–7254) which provides answers to public inquiries about access to IRIS, the content of specific IRIS health assessments, and risk assessment methodologies. EPA also operates a reading room (located in EPA's Andrew W. Breidenbach Environmental Research Center, 26 West Martin Luther King Dr., Cincinnati, OH) where the public may, by appointment, view background files supporting IRIS assessments. Further, EPA provides IRIS on the Internet for public access at *www.epa.gov/iris.*

Today's Actions

(1) EPA is moving the hotline function and reading room to the Washington, DC area. The hotline will be accessed via a new phone number, fax number, and email address. This information will be shown on the IRIS web site (*www.epa.gov/iris*) no later than September 30, 2001. The address of the new reading room will be provided concurrently on the IRIS web site.

(2) In response to user requests, EPA has undertaken a redesign of the IRIS web site. This change does not involve a change to the scientific content of IRIS; rather, it presents the data base in a more easily navigable and searchable format. The new redesign will be available by August 1, 2001, for public view and comment for 60 days. It will be accessible from the IRIS web site at www.epa.gov/iris. EPA invites IRIS users to visit the new site and provide feedback to several questions posted. After the test period ends and all comments are considered, EPA plans to replace the current web site with the redesigned site.

Dated: July 10, 2001.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 01–18197 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7015–6]

Integrated Risk Information System (IRIS); Notice; Request for Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for information on needs for health assessments on EPA's Integrated Risk Information System.

SUMMARY: IRIS is an EPA data base that contains EPA scientific consensus positions on human health effects that may result from chronic exposure to chemical substances in the environment. On February 22, 2001, EPA announced the 2001 IRIS agenda and solicited scientific information from the public for consideration in assessing health effects from specific chemical substances. Today, EPA is requesting information from the public to define needs for new and revised health assessments on IRIS in 2002–2005.

DATES: Information should be submitted by September 18, 2001.

ADDRESSES: Please send information in response to this notice to the IRIS Submission Desk, c/o Courtney R. Johnson, National Center for Environmental Assessment (8601D), U.S. Environmental Protection Agency, Washington, DC 20460. Alternatively, you may submit your response electronically to *IRIS.desk@epa.gov.* Electronic information must be submitted in WordPerfect or as an ASCII file. Information will also be accepted on 3.5'' floppy disks. All information in electronic form must be identified as an IRIS Submission.

FOR FURTHER INFORMATION CONTACT: For general information on the IRIS program, contact Amy Mills, National Center for Environmental Assessment (Mail Code 8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or call (202) 564–3204, or send electronic mail inquiries to *mills.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to chemical substances found in the environment. IRIS currently provides health effects information on over 500 specific chemical substances.

IRIS contains substance-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, *i.e.,* hazard identification and dose-response evaluation. Combined with specific situational exposure assessment information, the summary health hazard information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

History of the IRIS Program

EPA began the IRIS program in 1985 to build consensus opinions across the Agency on the potential health effects of chemical substances of concern to Program Offices and Regional Offices. The IRIS program has continually provided toxicity values and carcinogenicity assessments for the hazard and dose-response components of risk assessment. IRIS information has been used by Agency regulatory offices and in site-specific risk assessments. States and other organizations have also chosen to adopt IRIS information in their risk-based decision-making.

In response to public interest in access to IRIS, EPA released IRIS to the public in 1988(53 FR 20162). In 1993, EPA requested public comment on peer review procedures for IRIS health assessments and on public involvement in IRIS assessment development and review (58 FR 11490). In 1995, EPA initiated the IRIS Pilot, whereby various improvements were tested including procedures for peer review, public involvement, and consensus review. Many of these procedures were then adopted for the permanent IRIS program (61 FR 14570). In 1996, EPA provided access to IRIS on EPA's Internet site, enabling easier access for the Agency and the public. In 1997, EPA made the Internet site the official repository for IRIS.

Between 1998 and 2001, EPA has implemented numerous improvements identified in the IRIS Pilot, including publishing an annual **Federal Register** document announcing the IRIS agenda for the year, and requesting scientific information from the public to consider in new assessments. During this period, EPA also initiated evaluations or re-evaluations of over 100 chemicals for the IRIS program. As the use and demand for the IRIS data base continues

to grow, EPA plans to continue updating older assessments and adding new ones.

Process for Building and Updating IRIS

EPA will continue building and updating the IRIS data base in 2002. The Agency recognizes that many of the assessments on IRIS may need updating to incorporate new scientific information and methodologies. Further, many additional substances may be candidates for adding to IRIS. However, due to limited resources in the Agency to address the spectrum of needs, EPA develops an annual list of priority substances for assessment development. Substances are chosen for one or more of the following reasons: (1) Agency statutory, regulatory, or program implementation need; (2) new scientific information or methodology is available that might significantly change current IRIS information; (3) interest to other levels of government or the public; and (4) most of the scientific assessment work has been completed while meeting other Agency requirements and only a modest additional effort will be needed to complete the review and documentation for IRIS. The annual agenda is then refined based on available staff and other resources to carry out the assessments.

Purpose of the Needs Assessment

EPA is responding to the U.S. Senate request that EPA solicit public input in defining needs for new and updated specific chemical substances on the IRIS data base. Senate Report 106–410 specifically states,

> The committee requests that EPA conduct needs assessments with public input to determine the need for increasing [this] annual rate of updates to existing IRIS files during 2002–2005, as well as the need to add new IRIS files for chemicals not now included.

Information submitted in response to this **Federal Register** document will be used to help plan the IRIS agenda for 2002–2005. Specifically, the Agency is seeking information addressing the following questions:

1. How do you/your organization use IRIS? What actions or decisions are based on information in IRIS?

2. What additional chemical substance assessments do you need on IRIS? For each, why is this assessment needed?

3. For existing chemical substance assessments on IRIS, which do you think are in greatest need of scientific update? What is the basis for identifying these assessments for update (*e.g.,* newer study available, newer methodology to apply)?

4. What additional types of substance-specific Agency consensus information would you like to have on IRIS? For example, EPA is considering adding consensus health assessments for exposures of less than chronic duration, such as acute and possibly other subchronic exposures. Would these new types of information be of value to you? If so, how important would this information be to you in comparison to having updated information on chronic health effects?

5. EPA is currently testing collaborative efforts with external parties on the development of assessments for IRIS (66 FR 11165). The purpose is to involve the scientific knowledge and capability of organizations outside of EPA to improve the quality of IRIS supporting documents. External parties may include other government agencies, industries, universities, professional organizations, and other non-governmental organizations. EPA will evaluate the efficiency of the process and quality of documents produced to determine if the collaborative program should be expanded. Do you favor EPA's collaboration with external parties as a means of developing assessments for IRIS? If so, how could this collaboration be conducted?

EPA will compile the information received from the public in response to this notice along with internal EPA assessments of need, and develop a summary document that will be available for viewing on the IRIS web site. EPA expects to complete the summary document in December 2001.

Dated: July 10, 2001.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 01–18198 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7015–4]

Beaches Environmental Assessment and Coastal Health Act; Announcement of Public Forums for Draft National Beach Guidance and Grant Performance Criteria for Recreation Waters

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing five public forums to assist the public in their review of the draft National Beach Guidance and Grant Performance Criteria for Recreation Waters and in preparing comments. EPA has developed and is requesting public comments on the draft Guidance, and the document describes specific performance criteria for grant applicants to meet to be awarded grants.

Beaches Environmental Assessment and Coastal Health Act (BEACH Act) signed into law on October 10, 2000, amends the Clean Water Act (CWA), to reduce the risk of disease to users of the Nation's recreational waters. The BEACH Act authorizes the EPA to publish performance criteria for monitoring and assessment of coastal recreation waters and the prompt notification of exceeding applicable water quality standards. The BEACH Act also requires EPA to develop the criteria in cooperation with appropriate Federal, State, tribal, and local officials and provide public notice and an opportunity for comment.

EPA is now encouraging all Federal, State, and local environmental and health officials, environmental organizations, and the public to attend the public forums and submit comments on the Guidance.

DATES: See **SUPPLEMENTARY INFORMATION** for dates of public forums.

ADDRESSES: A copy of the document can also be obtained by downloading the file located at *www.epa.gov/waterscience/beaches/grants* on the Internet. See **SUPPLEMENTAL INFORMATION** for locations of public forums.

FOR FURTHER INFORMATION CONTACT: Mimi Dannel, 202–260–1897.

SUPPLEMENTARY INFORMATION:

I. Guidance Document

What Is the Statutory Authority for the Guidance Document?

The statutory authority for BEACH Guidance Document is section 406(b) of the Clean Water Act as amended by the BEACH Act, Pub. L. No. 106–284, 114 Stat. 970 (2000). It provides in part: ''The Administrator must publish performance criteria for monitoring and assessment of coastal recreation waters and the prompt notification of exceeding applicable water quality standards.''

What Are the Major Components of the Guidance Document?

The document contains five chapters and accompanying appendices which provide both guidance and grant performance criteria. Chapter 1 explains the legislation and human health concerns with microbial contamination of recreation waters. Chapter 2 describes

the nine grant performance criteria. Chapter 3 introduces the risk-based beach evaluation and classification process to prioritize waters. Chapter 4 describes beach monitoring and beach assessment for sampling and detecting bacteria, and Chapter 5 explains the public notification and risk communication to inform the public about risks when swimming in bacterially polluted water.

How Can I Obtain a Copy of the Document?

A copy of the document can also be obtained by downloading the file located at *www.epa.gov/waterscience/beaches/grants* on the Internet.

II. Public Forums

What Is the Purpose of the Public Forums?

The public forums will assist the stakeholders and the public in their review of the draft Guidance and in preparing comments to submit to EPA.

Will Formal Comments on the Guidance Be Taken at the Public Forums?

No. The public forums are not intended to be a mechanism to submit formal comments, but rather an information session instructing how to submit comments. EPA will later announce in the **Federal Register** the availability of the document, and will at that time announce a formal comment period.

Who Should Attend?

All levels of beach water quality managers and public health officials, as well as the general public should attend.

How Do I Register for the Public Forums?

The public forums are free, but registration is requested/appreciated due to seating. To register for the public forums, visit *www.epa.gov/waterscience/beaches/meeting.html* on the Internet.

When and Where Will the Public Forums Be Held?

The dates and cities of the public forums are:

1. July 31, 2001, 8:30 a.m. to 5:00 p.m., Wilmington, DE, Wyndham Garden Hotel, 700 King St.,Wilmington, DE 19801; (302) 655–0400, 1–800–996–3426.

2. August 3, 2001, 8:30 a.m. to 5:00 p.m., San Diego, CA, Town and Country Resort & Convention Center, 500 Hotel Circle N., San Diego, CA 92108; (619) 291–7131, 1–800–772–8527.3. August 21, 2001, 8:30 a.m. to 5:00 p.m., Jacksonville, FL, Radisson Riverwalk Hotel, 1515 Prudential Drive, Jacksonville, FL 32207; (904) 396–5100, 1–800–333–3333.

4. August 23, 2001, 8:30 a.m. to 5:00 p.m., New Orleans, LA, Le Meridien New Orleans, 614 Canal Street, New Orleans, LA 70130–9946; (504) 525–6500, 1–800–543–4300.

5. August 23, 2001, 8:30 a.m. to 5:00 p.m., Chicago, IL, The Ambassador West, 1300 N State Pkwy, Chicago, IL 60610; (312) 787–3700, 1–800–996–3426.

Dated: July 13, 2001.

Louise P. Wise,

Acting Director, Office of Science and Technology.

[FR Doc. 01–18195 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30119; FRL–6789–7]

Triphenyltin Hydroxide (TPTH); Notice of Final Determination for Termination of the TPTH Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In a **Federal Register** notice published October 20, 2000, EPA proposed to terminate the special review of the pesticide active ingredient triphenyltin hydroxide (TPTH) based on the determination that the benefits of use outweigh the risks. The Agency solicited public comments for a 30–day period. There were no comments submitted, and the Agency believes that the benefits of TPTH use continue to outweigh the risks. Thus, with this notice, EPA is announcing that it has terminated the TPTH Special Review.

DATES: This decision is effective on August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8025; fax number: (703) 308–8005; e-mail address: livingston.wilhelmena@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This action may be of particular interest to pesticide registrants with registered products which contain TPTH as an active ingredient, or to agricultural producers or mixers, loaders, or applicators using products containing TPTH as an active ingredient. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the '' **Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, related documents for TPTH may be accessed through the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/reregistration/status.htm .

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30119. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period,and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Response to Comments Submitted on EPA's Proposed Determination to Terminate Special Review

No comments were received during the 30–day public comment period.

III. EPA's Decision Regarding the Special Review

Special Review is a decisionmaking process designed to help EPA determine whether the Agency should initiate formal procedures, such as involuntary cancellation or suspension of a pesticide registration or the imposition of modified terms and conditions of registration because use of the pesticide may cause unreasonable adverse effects on the environment (40 CFR 154.1(a)). This notice concludes EPA's administrative special review of the risks and benefits of TPTH, which was initiated in the **Federal Register** notice of January 9, 1985 (50 FR 1107). In the October 20, 2000 **Federal Register** notice (65 FR 204) (FRL–6496–3), EPA announced its intent to terminate the TPTH Special Review. As stated in that document, based on its risk and benefits assessments, EPA has concluded that the benefits provided from the continued existing uses of TPTH outweigh the risks. There were no comments received in response to the October 20, 2000, proposal to terminate the TPTH Special Review. Accordingly, for the reasons set forth in the October 20, 2000 notice, EPA is announcing that it has terminated the TPTH Special Review.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 11, 2001.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 01–18200 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7015–1]

Methods for Assessing the Chronic Toxicity of Marine and Estuarine Sediment-Associated Contaminants With the Amphipod Leptocheirus plumulosus—First Edition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Methods for Assessing the Chronic Toxicity of Marine and Estuarine Sediment-associated Contaminants with the Amphipod *Leptocheirus plumulosus*—First Edition.

SUMMARY: The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) are publishing a technical manual that describes procedures for testing an estuarine organism in the laboratory to evaluate the potential toxicity of contaminants in whole sediments. This document supplements (but does not replace) procedures originally published in 1994 (EPA/600/6–94/025), for measuring acute sediment toxicity in marine and estuarine sediments. This document includes a new method for evaluating sublethal effects of sediment-associated contaminants utilizing long-term sediment exposures.

Availability of Document

Copies of the complete document, titled Methods for Assessing the Chronic Toxicity of Marine and Estuarine Sediment-associated Contaminants with the Amphipod *Leptocheirus plumulosus*—First Edition (EPA/600/R–01/020) can be obtained from the National Service Center for Environmental Publications, P.O. Box 42419, Cincinnati, OH., 45242 by phone at 1–800–490–9198 or on their web site at *www.epa.gov/ncepihom/orderpub.html.* A pdf version of this document will be made available to be viewed or downloaded from the Office of Science and Technology's home page on the Internet at *www.epa.gov/OST.*

FOR FURTHER INFORMATION CONTACT: D. Scott Ireland, EPA, Standards and Health Protection Division (4305), Office of Science and Technology, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or call (202) 260–6091; fax (202) 260–9830; or e-mail *ireland.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

BACKGROUND INFORMATION Sediment contamination is a widespread environmental problem that can potentially pose a threat to a variety of aquatic ecosystems. Sediment functions as a reservoir for common contaminants such as pesticides, herbicides, polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons (PAHs), and metals such as lead, mercury, and arsenic.

This technical manual describes procedures for testing an estuarine organism in the laboratory to evaluate the potential toxicity of contaminants in whole sediments. Sediments may be collected from the field or spiked with compounds in the laboratory. Toxicity methods are outlined for the estuarine amphipod, *Leptocheirus plumulosus.* Toxicity tests with this amphipod are conducted for 28 days in 1–L chambers containing 175 mL of sediment and abut 725 mL of overlying water. Overlying water is renewed three times per week and test organisms are fed during the toxicity tests. The endpoints of the 28 day test with *L. plumulosus* are survival, growth, and reproduction. This 28 day sediment toxicity test with *L. plumulosus* is recommended for use with sediment with varying levels of salinity from oligohaline to fully marine environments (from 1‰ to 35‰ salinity). The long-term sediment exposures with *L. plumulosus* are started with neonate (newborn) amphipods. After termination of the 28 day sediment exposure, the offspring are counted and the dry-weight or length of the adult amphipods is measured. The use of this uniform sediment testing procedure is expected to increase data accuracy and precision, facilitate test replication, and increase the comparative value of test results. This method provides a basis for consistent cross-program decision making within the EPA. Each EPA program will, however, retain the flexibility of deciding when and how to use this test and whether identified risks would trigger actions. This method also provides a consistent testing protocol for other Federal agencies, States, and Tribes. This technical manual has no immediate or direct regulatory consequence. It does not impose legally binding requirements, and may not apply to a particular situation depending on the circumstances. The EPA or USACE may change this technical manual in the future.

This technical manual has been subjected to review by EPA's National Health and Environmental Effects Research Laboratory and Office of Science and Technology and approved for publication. Mention of trade names or commercial products does not constitute endorsement by the Agency or recommendation for use.

Dated: July 3, 2001.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 01–18194 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00646A; FRL–6769–1]

Pesticides; Final Guidance for Pesticide Registrants on PesticideResistance Management Labeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of a final Pesticide Registration Notice PR-Notice titled ''Guidance for Pesticide Registrants on Pesticide Resistance Management Labeling.'' This PR-Notice was issued by the Agency on June 19, 2001, and is identified as PR-Notice 2001-OPP–00646A. PR-Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular PR-Notice provides guidance to registrants concerning voluntary pesticide resistance management labeling based on mode/target site of action for pesticide products that are intended for general agricultural use. If adopted on a voluntary basis by registrants, this effort will help reduce the development of pesticide resistance based on mode/target site of action and lead to better environmental protection. This approach is the result of a joint effort of the U.S. and Canada under the North American Free Trade Agreement (NAFTA). The guidance provides an opportunity for consistency in resistance management labeling being considered for approval in any or all of the countries involved in NAFTA. This PR-Notice includes guidance to registrants concerning schemes of classification of pesticides according to their mode/target site of action (Appendices I–III), a recommended standard presentation and format for showing group identification symbols on end-use product labels, and examples of resistance management labeling statements.

FOR FURTHER INFORMATION CONTACT: Sharlene R. Matten (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0514; fax number: (703) 308–7026; e-mail address: matten.sharlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are required to register pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice,consult the person listed under **FOR FURTHER INFORMATIONCONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document and the PR Notice from the Office of Pesticide Programs Home Page at http://www.epa.gov/pesticides/. You can also go directly to the listings from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register** —Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/ or go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides, and select ''PR Notices''.

2. *Fax-on-demand*. You may request a faxed copy of thePesticide Registration (PR) Notice titled ''Pesticide Resistance Management Labeling,'' by using a faxphone to call (202) 401–0527 and selecting item (6138). You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket control number OPP–00646A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes thedocuments that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Guidance Does this PR Notice Provide?

The United States Environmental Protection Agency (EPA) and PestManagement Regulatory Agency of Canada (PMRA) are committed to long-term pest resistance management through pesticide resistance management and alternative pest management strategies. Under the auspices of the North American Free Trade Agreement (NAFTA), the U.S. and Canada have joined together to develop and publish guidelines for purely voluntary pesticide resistance management labeling for implementation in North America. The development of these guidelines is part of the activities of the Risk Reduction Subcommittee of the NAFTA Technical Working Group on Pesticides. A more nearly uniform approach across North America can help reduce the development of pesticide resistance and support joint registration decisions by providing consistency in resistance management labeling being considered for approval in any or all of the NAFTA countries. To implement this NAFTA initiative, the Office of Pesticide Programs (OPP) of EPA has developed a Pesticide Registration (PR) Notice describing the voluntary pesticide resistance management labeling guidelines based on mode/target site of action for agricultural uses of herbicides, fungicides, bactericides, insecticides, and acaricides. Mode/target site of action refers to the biochemical mechanism by which the pesticide acts on the pest and should not be interpreted to imply that these chemicals share a common mechanism for purposes of cumulative human health risk assessment under the Federal Food Drug and Cosmetic Act (see EPA's document ''Guidance for identifying pesticide chemicals and other substances that have a common mechanism of toxicity'' located at http://www.epa.gov/fedrgstr/EPA-PEST/1999/February/Day-05/6055.pdf).

The final PR Notice describes schemes of classification of pesticides according to their mode/target site of action (Appendices I–III) provides a recommended standard presentation and format for showing group identification symbols on end-use

product labels, and provides examples of resistance management labeling. EPA believes that this approach to resistance management is sound and would be highly beneficial to pesticide manufacturers and pesticide users. EPA is hopeful that registrants will embrace this approach and work with EPA to implement it for all relevant products. EPA believes this approach is an important element of international harmonization.

B. PR Notices are Guidance Documents

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers and to pesticide registrants. This notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may always assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation. For the matters covered by this particular PR Notice, EPA also does not expect to require that any registrant adopt the labeling set forth here as part of any individual licensing decision or action. However, if any registrant seeks to use the language set forth here in the manner and circumstances described here, EPA does generally expect to find such language acceptable in any licensing proceeding.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 19, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs

[FR Doc. 01–18199 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7016–2]

Proposed CERCLA Administrative Cost Recovery Settlement; Budd Brothers, d/b/a/ Century 21 Paint, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Century 21 Paint, Inc. site in Mahoning County, Austintown, Ohio with the following settling party: Budd Brothers, d/b/a Century 21 Paint, Inc. The settlement requires the settling party to pay $120,000 to the Hazardous Substance Superfund. The conditions of the Agreement may be summarized as follows: Within 30 days of the effective date of this Agreement, the settling party will make an initial down payment of $50,000. The settling party agrees to pay the outstanding balance of $70,000 in three (3) equal installments, plus accrued interest on the unpaid balance, over a period of eighteen (18) months. The interest rate on the outstanding balance shall be the interest rate established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. 9607(a). The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Records Center Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before August 20, 2001.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Records Center Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from the Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments should reference the Century 21 Paint, Inc. site in Mahoning County, Austintown, Ohio and EPA Docket No. V–W–01–C–650 and should be addressed to Ms. Joanna Glowacki, Associate Regional Counsel, U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Joanna Glowacki, Associate Regional Counsel, U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604, at (312) 353–3757.

Dated: July 3, 2001.

William E. Muno,

Director, Superfund Division, Region 5, Environmental Protection Agency.

[FR Doc. 01–18192 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 01–1647]

The Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice; comments requested.

SUMMARY: In this document, the Commission invites interested parties to update the record pertaining to petitions for reconsideration filed with respect to the rules the Commission adopted in the *Universal Service First Report and Order.*

DATES: Comments are due on or before August 20, 2001. Reply comments are due on or before September 4, 2001.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Sheryl Todd, Management Analyst, or Richard Smith, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On May 8, 1997, the Commission released the *Universal Service First Report and Order,* 62 FR 32862, May 8, 1997, as required by the 1996 Telecommunications Act. Many parties filed petitions for reconsideration of that order. Since then, there has been substantial litigation concerning many of the rules adopted in the *Universal Service First Report and Order.* As a result, many of the issues raised in the petitions for reconsideration may no longer remain in dispute.

The Commission has refrained from considering many of the petitions for reconsideration of the rules adopted in the *Universal Service First Report and Order* until most of the litigated issues were resolved. Now that issues in dispute have narrowed, the Commission will proceed to address petitions for reconsideration relating to rules that are not the subject of pending litigation.

Because these petitions were filed several years ago, the passage of time and intervening developments may have

rendered the records developed by those petitions stale. For example, in addition to the litigation mentioned, the Commission has issued several orders on reconsideration of the *Universal Service First Report and Order.* Moreover, some issues raised in petitions for reconsideration may have become moot or irrelevant in light of intervening events.

For these reasons, the Bureau requests that parties that filed petitions for reconsideration of the *Universal Service First Report and Order* in 1997 now file a supplemental notice indicating which of such issues they still wish to be reconsidered. In addition, parties may refresh the record with any new information or arguments they believe to be relevant to deciding such issues. To the extent parties do not indicate an intent to pursue their respective petitions for reconsideration, the Commission will deem such petitions withdrawn and they will be dismissed. The refreshed record will enable the Commission to undertake appropriate reconsideration of its universal service rules.

Pursuant to §§ 1.415 an 1.419 of the Commission's rules, interested parties may file comments as follows: Comments are due August 20, 2001, and reply comments are due September 4, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of the electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12 Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–A422, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc. 1231 20th Street, NW., Washington, DC 20037.

Pursuant to § 1.1206 of the Commission's Rules, this proceeding will continue to be conducted as a permit-but-disclose proceeding in which *ex-parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Katherine L. Schroder,

Division Chief, Accounting Policy Division.

[FR Doc. 01–18159 Filed 7–19–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 2001.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Gideon Bankshares Company, Dexter, Missouri; to engage *de novo* through its subsidiary, First Commercial Investment Center, Dexter, Missouri, in retail securities brokerage activities, pursuant to § 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 17, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–18179 Filed 7–19–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. *HHS Procurement:* Solicitations and Contracts—0990–0115—Extension—This clearance request covers the general information collection requirements of the procurement process such as technical proposals and statements of work. Respondents: State, local or Tribal governments, businesses or other for-profit, non-profit institutions, small businesses. Annual Number of Respondents: 4,269; Frequency of Response: one time; Average Burden per Response: 231.03 hours; Total Burden: 986,280.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designed above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC 20201. Written comments should be received within 30 days of this notice.

Dated: June 19, 2001.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 01–18135 Filed 7–19–01; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Announcement of Tribal Consultation With American Indian/Alaskan Native Tribal Representatives

The Department of Health and Human Services policy on consultation with American Indian/Alaska Native (AI/AN) Governments and Organizations calls for each Operating Division to convene a meeting with AI/AN Tribal Representatives.

In accordance with Departmental policy on Tribal Consultation with AI/AN Governments and Organizations, the Administration on Aging will be hosting a one-day session to give AI/AN Tribal Representatives and their Title VI Director an opportunity to discuss Indian elder issues related to (1) infrastructure; (2) long term care; and (3) the Older Americans Act Regulations. Participants will have an opportunity to present their recommendations to the Assistant Secretary for Aging.

This Tribal Listening Session will be held from 9 am to 4 pm on August 15, 2001 at: Department of Health and Human Services; Hubert Humphrey Building; 200 Independence Avenue, SW., Washington, DC 20201.

A final agenda will be distributed at the meeting.

To register and for additional information please contact: M. Yvonne Jackson, Ph.D., Director, Office for American Indian, Alaskan Native and Native Hawaiian Programs, Administration on Aging, 330 Independence Ave., SW., Washington, DC 20201, (202) 619–2713, Email: *Yvonne.Jackson@aoa.gov.*

In accordance with the provisions of the Americans with Disabilities Act (ADA), it is requested that any special assistance requirements be requested within seventy-two (72) hours of the scheduled Tribal Listening Session.

Purpose: In accordance with Departmental policy on consultation with (AI/AN) Governments and Organizations, AoA will host this meeting to give AI/AN Tribal Representatives an opportunity to discuss the above-mentioned areas and develop recommendations to present to the Assistant Secretary for Aging.

Date and Time: August 15, 2001, 9 am–4 pm est.

Matters to be Discussed: The agenda will include opening remarks and breakout sessions to discuss Infrastructure and Long Term Care, a general session to share results from the breakout sessions, open mike to discuss the Older Americans Act Regulations and closing remarks.

If you are unable to attend but wish to provide comments or Tribal Resolutions, these may be faxed to M. Yvonne Jackson's attention at (202) 260–1012.

Dated: July 16, 2001.

Norman L. Thompson,

Acting Principal Deputy Assistant Secretary for Aging.

[FR Doc. 01–18136 Filed 7–19–01; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01147]

Cooperative Agreement With the World Health Organization/Regional Office for Africa (WHO/AFRO); Notice of the Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), National Center for HIV/STD/TB Prevention (NCHSTP), announces the availability of funds for fiscal year (FY) 2001 for a sole source cooperative agreement with the World Health Organization/Regional Office for Africa (WHO/AFRO).

The purpose of this agreement is to help support implementation of the Leadership and Investment in Fighting an Epidemic (LIFE) Initiative, a United States Government program that seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia and the Americas. CDC, through the LIFE Initiative, focuses on strengthening the capacity of national AIDS control programs in the areas of (1) HIV primary prevention, (2) HIV care, support, and treatment, and (3) capacity and infrastructure development, especially for surveillance. Countries targeted represent those with the most severe epidemic and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active. An updated list of partner countries for the CDC-LIFE Initiative is available at *http://www.cdc.gov/nchstp/od/gap/default.htm.*

This agreement supports a framework of interventions, grounded in a series of goals and objectives consistent with those established for the international community by the Joint United Nations Programme on AIDS (UNAIDS) in support of the International Partnership Against AIDS in Africa (IPAA).

According to recent estimates from UNAIDS and WHO, 36.4 million adults and children were living with HIV by the end of 2000. Of the total estimate, approximately 25.3 million (69 percent of the total world-wide) adults and children were living with AIDS in sub-Saharan Africa alone. As a key partner in the U.S. Government's LIFE Initiative, CDC, through its Global AIDS Program (GAP), is working in a collaborative manner with national governments, USAID and other Federal agencies, and other international donor agency partners to develop programs of assistance to address the HIV/AIDS epidemic in LIFE Initiative countries. CDC is establishing partnership and support relationships primarily with national governments in highly affected countries, and with a number of other partner organizations to support country-level action.

B. Eligible Applicants

Assistance will be provided only to the World Health Organization/Regional Office for Africa (WHO/AFRO) in support of LIFE Initiative activities in sub-Saharan Africa. No other applications will be solicited.

WHO's Regional Office for Africa is the most appropriate and qualified agency to conduct a specific set of activities supportive of CDC's LIFE Initiative-related assistance to countries in sub-Saharan Africa because:

1. WHO/AFRO covers the region of the world most heavily impacted by the HIV/AIDS epidemic and is both chartered and uniquely positioned to assist national AIDS control programs and other partners to strengthen national health sector responses to HIV/AIDS.

2. WHO, through its regional office, is a leading partner within the International Partnership Against HIV/AIDS (IPAA) in Africa, an international umbrella effort to increase support and visibility for a multi-lateral emergency response to the AIDS epidemic in Africa. The LIFE Initiative is a key supporter of the IPAA.

3. Through decisions and resolutions of the WHO Regional Committee for Africa, the WHO Executive Board and the World Health Assembly, WHO/AFRO's Regional Programme on AIDS (RPA) has been called upon to accelerate its support to the regional

response. The Strategic Plan for Scaling Up WHO/AFRO's Support to Countries outlines RPA's planned approaches to accelerating support to countries. Planned approaches are all within the context of the IPAA and consistent with the overall spirit of the LIFE Initiative.

4. The focus of action for CDC's requested support from WHO/AFRO is in regional policy setting, information sharing and regional-level aggregation and interpretation of health data related to surveillance, prevention and care for HIV/AIDS within the region. In this sense, WHO/AFRO is unique in that it is the sole health sector policy-setting organization that includes all sub-Saharan African countries as member countries within one organization. WHO also maintains a network of country offices and WHO Coordinating Centres to serve as critical links for ensuring country access to available technical resources, information and coordination.

C. Availability of Funds

Approximately $1,000,000 is available in FY 2001 to fund this project. It is anticipated that the award will begin on or about September 30, 2001 and will be made for a 12-month budget period within a project period of up to five years. Annual funding estimates may vary and are subject to change.Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Use of Funds

General Use

Funds may be used for: (a) Establishing strategies, policies and guidelines for health sector responses to the HIV/AIDS epidemic in Africa in areas such as surveillance, laboratory, care and prevention. (b) Conducting meetings and other relevant activities that contribute to the development, dissemination and evaluation of strategies, policies and guidelines. (c) Aggregating and disseminating information, strategies, policies, guidelines and training materials pertinent to HIV/AIDS and HIV-related conditions, including internet-based and other tools for efficient cataloguing and disseminating such information, and support for increasing national capacities to retrieve such information from such systems. (d) Building capacity within Ministries of Health, National AIDS Councils, and similar key national institutions. (e) Supporting key networks within the region to lead evidence-based, improved health sector practices relevant to HIV/AIDS in Africa (such as international networks within Africa to provide training in HIV quality of care on a national or subregional basis).

General Non-Use

Funds received from this announcement will not be used for capital expenditures such as the purchase of off-road and multi-passenger vehicles, large volume (greater than 50) purchase of computers and data storage systems, space renovations and other significant improvements to physical environments where activities are carried out.

Specific Non-Use

Funds received from this announcement will not be used for the direct treatment of established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the direct purchase of equipment and reagents to conduct hospital-based laboratory monitoring for patient care or confirmatory tests. Funds will not be used for staff positions within CDC or WHO country offices.

Antiretroviral Drugs

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Needle Exchange

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address (*http://www.cdc.gov*). Scroll down the page, then click on ''Funding'' then ''Grants and Cooperative Agreements.''

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Dorimar Rosado, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), Procurement and Grants Office, Room 3000, 2920 Brandywine Road, Mailstop E–15, Atlanta, GA 30341–4146, Telephone: 770–488–2782, E-mail: *dpr7@cdc.gov*.

For program technical assistance, contact: Michael St. Louis, Global AIDS Program (GAP), Zimbabwe Country Team, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 38 Samora Machel Ave., 2nd Floor, Harare, Zimbabwe, Telephone number: 263–11–613–193, Email address: *stlouism@zimcdc.co.zw*.

Dated: July 16, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18158 Filed 7–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01187]

Human Immunodeficiency Virus (HIV) Prevention Intervention Research Studies—Routinely Recommending HIV and Sexually Transmitted Disease (STD) Counseling and Testing in Ambulatory Care Clinics and Emergency Rooms; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001

funds for a cooperative agreement program to reduce HIV incidence through prevention intervention research studies that routinely recommend HIV and STD counseling and testing in ambulatory care clinics and emergency rooms. This program addresses the ''Healthy People 2010'' focus area of HIV.

The purpose of this activity is to study the outcome of routinely recommending HIV counseling and testing and STD screening in ambulatory care clinics and emergency rooms.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, small, minority, women-owned businesses.

Note: Title 2 of the United States Code, chapter 26, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $600,000 is available in FY 2001 to fund approximately two to three awards. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant State or local funds available for HIV Prevention. Funds may not be used to provide direct medical care or prevention case management.

Funding Preference

Funding preference may be given to achieve geographical diversity.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Review existing information, research study protocols, and data collection forms to build on existing knowledge and to establish the basis for the application.

b. Develop a research protocol and plans for conducting this research, with appropriate participation of State and local health departments, hospitals and other public and private organizations; professional associations, community groups and organizations, especially those with a racial and ethnic minority membership and focus; HIV/AIDS service organizations; and organizations that serve persons with HIV disease, STD, or AIDS.

c. Establish procedures to maintain the rights and confidentiality of all study participants. Prior to implementation, this study must be submitted to the local and CDC Institutional Review Boards (IRBs) for review and approval or deferral. The IRB review at each cooperating institution will be done by an Office for Human Research Protections (OHRP)-approved IRB with either a single, multiple, or federal-wide project assurance.

d. Identify, recruit, obtain informed consent (when appropriate), enroll, and follow an adequate number of study participants as determined by study protocol and the program requirements.

e. Perform testing for chlamydia, gonorrhea and HIV.

f. Perform data analysis as determined in the study protocol.

g. Disseminate the findings.

2. CDC Activities

a. Provide technical assistance, if requested, in the design and conduct of the research.

b. The CDC IRB will review and approve each protocol initially and on at least an annual basis until the research project is completed.

c. As needed, assist in designing a data management system and data analysis.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to follow them in laying out your program plan. The narrative should be no more than 25 pages double-spaced, printed on one side, with one inch margins, and unreduced font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

On or before August 30, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the Special Emphasis Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late: Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Objectives (10 points):

To the degree to which the applicant includes: (1) A detailed review of the scientific literature pertinent to testing in ambulatory care clinics and emergency rooms; (2) clearly stated goals and objectives for the research; and (3) a description of how the intervention would impact HIV and STD prevention in the community.

2. Site Selection (15 points)

The extent to which the application includes a description of: (1) The

current magnitude and characteristics of the HIV epidemic; (2) STD disease burden; (3) the number of persons served by the clinics; and (4) the expected number of newly-identified HIV infections that will be detected. Letters of support from cooperating organizations should be included which clearly describe the nature and extent of such cooperation.

3. Methods (30 points)

To the extent the application describes the potential intervention and how it might impact on HIV and STD incidence in the study area. It should specify potential barriers to implementing the intervention and how they will be overcome. The methods for assessing the increase in number of persons tested, as well as the number of infected persons identified and successfully referred for treatment, should also be addressed. In addition, applications will be evaluated on the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

4. Research Capacity (20 points)

The extent to which the application describes the capacity and experience of the research team which includes curriculum vitae and position descriptions for key staff. The percentage-time commitments, duties, and responsibilities of project personnel and involvement of state and local health department personnel should be sufficient to operationalize the proposed methodology. Letters of support from key collaborators, community groups, State and local health departments, should be included. The letters of support must include a brief description of the specific support to be provided, and should be limited to three pages each. The application should document that there is sufficient space available in the ambulatory care clinic or emergency room for the addition of the testing program. The application should also provide evidence that at least 500 persons per year visit the ambulatory care facility or emergency room, many of whom may be HIV-infected and who do not know they are HIV-infected. The application should demonstrate the applicant's ability to do testing for chlamydia, gonorrhea, and HIV, either in house or through contractual services.

5. Sustainability of the intervention (15 points)

Strength of plans, time-lines, and objectives for how project will be sustained.

6. Evaluation Plan (10 points)

Appropriateness and comprehensiveness of: (a) The schedule for accomplishing the activities of the research; (b) an evaluation plan that identifies methods and instruments for evaluating progress in implementing the research objectives; and (c) a proposal to complete and submit for publication, a report of research findings.

7. Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intent of the announcement.

8. Human Subjects (not scored)

Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks are so inadequate as to make the entire application unacceptable.)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original and two copies of:

1. Annual progress reports to be submitted with subsequent continuation applications;

2. Financial status report, no more than 90 days after the end of the budget period;

3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I and Attachment II of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act sections 317 (42 U.S.C. 241(a) and 247b); 301 (42 U.S.C. 241); and 311 (42 U.S.C. 243), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address *http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documentation, business management technical assistance may be obtained from: Brenda Hayes, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mailstop E–15, Atlanta, GA 30341–4146, Telephone: (770) 488–2741, Email address: *bkh4@cdc.gov*

For program technical assistance, contact: Cassandra Walker, MPH, Acting Deputy Chief Prevention Services Research Branch, Division of HIV/AIDS Prevention, Surveillance & Epidemiology National Center for HIV, STD, TB Prevention Centers for Disease Control and Prevention 1600 Clifton Road, Mailstop E–46, Atlanta, GA 30333, Telephone Number: (404) 639–6191, Email address: *cwalker5@cdc.gov*

Dated: July 13, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18047 Filed 7–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01188]

Human Immunodeficiency Virus (HIV) Prevention Intervention Research Studies—Social and Environmental Interventions to Prevent HIV; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for social and environmental interventions to prevent HIV. This program addresses the ''Healthy People 2010'' focus area of Human Immunodeficiency Virus (HIV).

The purpose of the program is to design and implement social and environmental interventions to reduce the risk of HIV transmission.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, small, minority, women-owned businesses.

Note: Title 2 of the United States Code, chapter 26, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $400,000 is available in FY 2001 to fund approximately two awards. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000.

It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant State or local funds available for HIV Prevention. Funds may not be used to provide direct medical care or prevention case management.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2.(CDC Activities).

1. Recipient Activities

a. Develop a research protocol and plans for conducting this research with appropriate participation of State and local health departments; professional associations, community groups and organizations, especially those with a racial and ethnic minority membership and focus; HIV/AIDS service organizations; and organizations that serve persons increased risk of HIV/AIDS.

b. Promote the development and evaluation of social and environmental interventions for HIV prevention by providing data and ongoing assistance to community planning groups; by disseminating data through publications and presentations; by participating in project planning and implementation meetings; and by reporting ways in which the data have been used to promote public health.

c. Establish procedures to maintain the rights and confidentiality of all study participants. Prior to implementation, this study must be submitted to the local and CDC Institutional Review Boards (IRBs) for review and approval or deferral.

d. Review existing information, research study protocols, and data collection forms.

e. In collaboration with the community, identify opportunities and needs for interventions; assess the acceptability and feasibility of identified interventions; estimate the potential effectiveness of the interventions in preventing infection and disease.

f. Implement the intervention and assess process outcomes.

g. Identify, recruit, obtain informed consent (when appropriate), enroll, and follow an adequate number of study participants as determined by study protocol and the program requirements.

h. Perform data analysis as determined in the study protocol.

2. CDC Activities

a. Provide technical assistance, as needed, in the design and conduct of the research.

b. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. As needed, assist in designing a data management system.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to follow them in laying out your program plan. The narrative should be no more than 25 pages double-spaced, printed on one side, with one inch margins, and unreduced font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before August 30, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date;

2. Sent on or before the deadline date and received in time for submission to the Special Emphasis Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late: Applications which do not meet the criteria in 1. or 2. above will not be considered and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Objectives (10 points)

The extent to which the application includes a detailed review of the scientific literature pertinent to the study being proposed, with evidence for the relationship of social and environmental factors to the incidence of HIV. This literature review and a review of conditions in the study community should suggest specific research questions that will guide the research. The extent to which the goals and objectives for the research are clearly stated along with how the intervention would impact one of the underlying factors determining HIV incidence in the community.

2. Site Selection (15 points)

The extent to which the application includes a description of the size and characteristics of the communities proposed for study. The extent to which the application describes the prevalence and estimated incidence of HIV infection in the study community. Includes age, gender, race/ethnicity, and HIV-risks of persons with HIV in the community where the intervention will be implemented; describes the likely acceptability of the intervention by persons in the community. Letters of support from cooperating organizations should be included which detail the nature and extent of such cooperation.

3. Methods (45 points)

Appropriateness of methods for implementing and evaluating the social and environmental interventions to reduce HIV incidence and assessing the potential impact of the intervention within a community or geographic area.

The extent to which the application describes the social-environmental issue that the recipient wants to address, how the potential intervention will influence the issue, and how the intervention might impact on HIV incidence in the study area.

The extent to which the application specifies potential barriers to implementing the intervention and how barriers will be overcome. The potential impact on HIV reduction should be clear. The intervention should be new and sustainable in the future without ongoing CDC funding.

In addition, applications will be evaluated on the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

4. Research Capacity (20 points)

The extent to which the application describes the capacity and experience of the research team and includes curriculum vitaes and position descriptions for key staff and project participants. The percentage-time commitments, duties, and responsibilities of project personnel should be sufficient to operationalize the proposed methodology.

5. Evaluation Plan (10 points)

The extent to which the application includes time-phased and measurable objectives. The proposed report of research findings should document the process of identifying and implementing the intervention and the acceptability and estimated impact within the community.

6. Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intent of the announcement.

7. Human Subjects (not scored)

The extent to which the application adequately addresses the requirements of 45 CFR part 46 for the protection of human subjects. (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original and two copies of:

1. Annual progress reports to be submitted with subsequent continuation applications;

2. Financial status report, no more than 90 days after the end of the budget period;

3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act sections 317 (42 U.S.C. 241(a) and 247b); 301 (42 U.S.C. 241); and 311 (42 U.S.C. 243), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address *http://www.cdc.gov* Click on ''Funding' then ''Grants and Cooperative Agreements.''

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documentation, business management technical

assistance may be obtained from:James Masone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mailstop E–15, Atlanta, GA 30341–4146, Telephone: (770) 488–2736, Email address: *zft2@cdc.gov*

For program technical assistance, contact: Cassandra Walker, MPH, Acting Deputy Chief, Prevention Services Research Branch, Division of HIV/AIDS Prevention, Surveillance & Epidemiology, National Center for HIV, STD, TB Prevention Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–46 Atlanta, GA 30333 Telephone Number: (404) 639–6191Email address: *cwalker5@cdc.gov*

Dated: July 13, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18048 Filed 7–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01171]

Expansion of HIV/AIDS Prevention Activities in the Republic of Kenya by Promoting the Establishment of ''Free-Standing'' or ''Stand-Alone'' Sites Which Deliver Volunteer Counseling and Testing Services; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY)2001 funds for a cooperative agreement program for the expansion of HIV/AIDS Prevention Activities in the Republic of Kenya.

The purpose of the program is to Promote the establishment of ''free-standing'' or ''stand-alone'' sites which deliver voluntary counseling and testing (VCT) services to the Kenyan public in support of the Kenyan CDC Country Plan for HIV/AIDS prevention.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies and international organizations with a minimum of 2 years of experience in managing funds and delivering volunteer counseling and testing(VCT)service in developing countries in Africa.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $1.0 million is available in FY 2001, to fund one award. A similar amount will be available each year during the period of the project. It is expected that the award will begin on or about September 30, 2001 and will be made for a 12-month budget period with a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

All services provided under this announcement will be free to the individuals obtaining the service. The grantee will not collect any fee(s) in association with the services provided.

Antiretroviral Drugs

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested).

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Needle Exchange

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug. Funds received from this announcement may not be used for the following: The purchase of machines and reagents to conduct laboratory monitoring for patient care

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under ''Recipient Activities'', and CDC will be responsible for the activities listed under ''CDC Activities''

Recipient Activities

1. Developing and establishing stand-alone VCT sites in key urban areas of Kenya.

a. Identify key urban locations and sites in Kenya appropriate for stand-alone VCT sites, and develop a phased plan for establishment of up to twenty (20) sites by the end of three years.

b. Identify and select local partners (such as but not limited to Non-Government Organizations, NGOs) with the capacity to manage and deliver VCT services at stand-alone sites. (For Example: This may involve selecting one national organization or several regional or local organizations. If necessary, it may involve assisting in the formation of a Kenyan NGO with the specific mandate to provide VCT services, similar to the Ugandan NGO, the AIDS Information Center, which was set up by a consortium of Ugandan and international organizations.)

c. Develop and implement a specific model for service delivery to be uniformly implemented at all sites. This should include hours of operation during evening and weekend hours. Provision of integrated reproductive and HIV related health services at these sites, such as family planning services, the detection and treatment of other sexually transmitted diseases, and TB education and screening is desirable. In addition, on-going services for VCT clients, such as ''Post-Test Clubs'' and referral networks for care, should be included in the proposal.

d. Free services should be considered for proposal, however, a minimal fee may be charged with fees generated being utilized to further market VCT services.

e. Develop and implement a plan for the recruitment, employment, training, and supervision of staff to provide VCT services at free-standing sites, including both counseling and testing services to be performed on-site.

f. Ensure that all sites are appropriately advertised

2. Assist other NGOs wishing to provide VCT as part of their AIDS activities.

a. Solicit proposals from NGOs who wish to provide VCT services as part of their AIDS prevention and/or care efforts, including such groups as KICOSHEP, KAPC, church and faith-based organizations, and others.

b. Provide funding through ''contracts'' to these organizations. All contracts over $15,000 will require approval by in-country CDC staff.

c. Provide on-going technical assistance to such groups.

d. Foster a network of VCT sites for continuing education, sharing of resident technical expertise and lessons learned.

3. Provide HIV test kits and other supplies needed to conduct on-site, confirmed, rapid HIV testing for VCT purposes.

a. Procure HIV test kits and other supplies as needed. Selection of test kits will be made on the basis of CDC recommendations and will require test kits approved for use in Kenya.

b. Develop a system for the distribution and re-stocking of HIV test kits and consumables.

c. Develop a system for additional testing of samples with discordant results, and for quality assurance testing.

4. Develop mobile VCT services for sites not appropriate for a permanent VCT center.

a. Propose a strategy and specific plan for mobile VCT services in rural areas and other locations which do not justify a full-time VCT center.

b. Implement mobile VCT services in year two. This activity may require the procurement of vans or mobile-home type vehicles which would have room for a small laboratory and at least two counseling rooms.

5. Provide on-going support, monitoring, supervision, and evaluation of these sites

a. Ensure that all VCT sites are operating in accordance with the Kenya National VCT guidelines and with all applicable local and international standards.

b. Ensure that all funds disbursed for VCT activities are properly used and accounted for, and train staff at VCT sites in proper accounting procedures.

c. Develop systems for routine monitoring and supervision of VCT services, including a system for computerized record keeping at all sites, and central level analysis and reporting.

d. Propose, develop and implement a methodology for the evaluation of stand-alone VCT sites in Kenya.

CDC Activities

1. CDC will collaborate with the recipient on designing and implementing the activities listed above, including but not limited to providing technical assistance to develop and implement program activities, quality assurances, data management, statistical analysis and presentations of program methods and findings.

2. Monitor project and budget performance.

3. Approve the selection of key personnel to be involved in the activities preformed under this cooperative agreement.

4. Rapid HIV Test kits may be provided in limited amounts for the purpose of this activity.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and 12 point font. All pages should be numbered and indexed. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before August 17, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated postmark or obtain a legibly dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late: Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria

Application

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Problem (15 percent)

The extent to which the applicant's proposal demonstrates a clear and concise understanding of the AIDS epidemic in Kenya and the role of VCT as a prevention intervention and as an entry point to care.

2. Technical and Programmatic Approach (30 percent)

The extent to which the applicant's proposal demonstrates an understanding of how to develop, promote, implement, monitor, and evaluate VCT services offered outside of traditional medical settings.

3. Ability to Carry Out the Project (20 percent)

The extent to which the applicant documents demonstrated capability to achieve the purpose of the project.

4. Personnel (20 percent)

The extent to which professional personnel involved in this project are qualified, including evidence of experience in working with HIV/AIDS and specifically with VCT in stand-alone settings.

5. Plans for Administration and Management of the Project (15 percent)

The extent to which the plan, objectives, and methods described meet the program objectives and the adequacy of described evaluation methodology meets the plans of the project.

6. Budget (Not scored, but evaluated)

The extent to which the itemized budget for conducting the project is reasonable and well justified. The percentage of the budget going for direct VCT services will be assessed and considered. The applicant should include an analysis in the budget of the cost per client served.

7. Human Subjects (Not Scored)

The extent to which the application adequately addresses the requirements of 45 CFR 46 for the protection of human subjects. (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Semi-annual progress reports;
2. Financial status report, no more than 90 days after the end of each year's budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the total five year project period.
4. Awardee is required to obtain annual program specific audit of these CDC funds by a US-based audit firm with international branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required with the potential awardee, pre or post award, in order to review their business management and fiscal capabilities regarding their handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–4 HIV/AIDS Confidentiality Provisions
AR–6 Patient Care
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, [42 U.S.C. 242I], as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.'' To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Program Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2782, Email address: *dpr7@cdc.gov.*

For program technical assistance, contact: Elizabeth Marum, Ph.D., Technical Advisor in HIV/AIDS, Center for Disease Control and Prevention (CDC), Nairobi, Kenya, Telephone: 254–2–713–008 (office),254–072–727–933 (mobile), 254–2–714–745 (fax), Email: *emarum@kisian.mimcom.net*, Local mailing address: P.O. Box 30137, Nairobi, Kenya, U.S. Mailing address: Unit 64112,APO AE 09831–4112.

Dated: July 16, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18156 Filed 7–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01166]

Division of International Health/Global AIDS Program; Strengthening Masters of Public Health Program in Zimbabwe; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program with the University of Zimbabwe, Department of Community Medicine (UZ/DCM) to strengthen the Masters of Public Health (MPH) Program and to mobilize MPH faculty and students to more comprehensively address the HIV/AIDS (Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome) epidemic in Zimbabwe. This program addresses the ''Healthy People 2010'' focus area Public Health Infrastructure.

The objectives of this program are: (1) Development and implementation of a plan to increase capacity to train applied epidemiologists in MPH and related programs, and (2) to create a focus for monitoring and evaluation of response to the HIV/AIDS epidemic within the University, and to increase the quality and quantity of teaching, program evaluation projects and support services to the Ministry of Health and Child Welfare (MOHCW) and the National AIDS Council (NAC), and related HIV/AIDS initiatives within the University. The objectives are intended to be mutually reinforcing, with the resources allocated for HIV/AIDS monitoring and evaluation efforts providing training and related professional opportunities for students and faculty, and the expanded student and faculty base contributing to the expanded human resources needed for an effective response to HIV/AIDS in Zimbabwe and in the region.

The increased capacity of the MPH training program would enhance the Zimbabwe-CDC (ZimCDC) AIDS Project's vision of ''Capacity building and technology transfer focused on public sector human resources'' and the Division of International Health/EPO's mission of ''Working with partners to strengthen capacity of countries around the world to improve public health''. This would be accomplished through a collaborative project between the ZimCDC, the UZ/DCM, and the Division of International Health (DIH), Epidemiology Program Office. The UZ MPH Program will be a cornerstone of the capacity building vision in the region. Through a cooperative agreement, CDC will provide core support to the UZ/DCM to increase the size of the training program in applied epidemiology and management for national personnel, and support related measures to simultaneously train district level personnel. CDC will also provide core support to an UZ/DCM-based Center for Monitoring and Evaluating the Response to HIV/AIDS.

B. Eligible Applicants

Assistance will be provided only to the University of Zimbabwe, with the assistance targeted to the University's School of Medicine, Department of Community Medicine. No other applications are solicited.

The UZ/DCM MPH program is an applied epidemiology training program founded in 1993 through a collaborative effort between the MOHCW and the UZ/DCM. Currently, with 10 trainees per

year, the program is supported by the Rockefeller Foundation and the MOHCW. In the eight years of its operation, the MPH program has trained approximately 40 personnel and currently has 15 trainees in their two-year course. It has recently been tasked to train up to 300 district health team members in health information for district management over 2 years leading to a Certificate in Health Information for District Management (CHIDM).

The UZ/DCM MPH program is the only MPH program in the country. The purpose of this agreement is to build upon the success of the program and allow it to expand without compromising the quality of the training.

There is urgency to putting this award in place. Zimbabwe is among the countries in the world most affected by HIV/AIDS: HIV prevalence is estimated to be at least 27 percent, there has been 10-fold increase in the number of TB cases, and up to 35 percent of the children may be orphaned by AIDS at the end of this decade. At the same time, the public health response to the epidemic in Zimbabwe is inadequate due in part to insufficient manpower in the Zimbabwe public health system. This training program will enable Zimbabwe to develop and place epidemiologists who are better equipped to address epidemics.

C. Availability of Funds

Approximately $500,000 is available in FY 2001 to fund one award. It is expected that this level of funding will be available each year. It is expected that the awards will begin on or about September 2001 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change, based on performance and the availability of funds.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements.''To obtain additional business management information, contact:Mattie Jackson, Grants Management Specialist,Grants Management Branch,Procurement and Grants Office, 2920 Brandywine Road, Room 3000,Atlanta, GA 30341–4146,Telephone: (770) 488–2696,Email: mij3@cdc.gov.

For program technical assistance, contact:

Dr. Peter Nsuguba, Epidemiologist,Epidemiology Program Office,Division of International Health,Centers for Disease Control and Prevention, 2877 Brandywine Road, Room 4507,Atlanta, GA 30314–4146,Telephone: (770) 488–8334,Email: pcn0@cdc.gov

or

Mark Fussell,Zimbabwe-CDC AIDS Project Team, 38 Samora Machel Avenue, 2nd Floor,Harare, Zimbabwe,Office: 263–11–613194,Email: fussellm@aimcdc.co.zw.

Dated: July 16, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC)

[FR Doc. 01–18157 Filed 7–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: TANF Time Limits Questionnaire.

OMB No: New Collection.

Description: The imposition of federally imposed time limits on the receipt of cash assistance under the Temporary Assistance to Needy Families (TANF) program was a central and major part of welfare reform. The earliest that TANF recipients could be affected by the 60-month federal limit will be in the last quarter of 2001. The purpose of the TANF Time Limits project is to document what is known about this important element of welfare reform as the period for TANF re-authorization approaches. The proposed survey instrument is intended to obtain ''real-time'' information from those states in which TANF recipients could have reached the 60 month limit on receipt of federally funded assistance in the last quarter of calendar year 2001. The instrument is designed to gather preliminary information about the number of families accumulating 60 months of benefits, the outcomes for such families (*e.g.,* cases closed, benefits extended with Federal funds, benefits extended with State funds), and the policies and practices of states to work with families approaching or reaching the federal time limit.

Respondents: The primary respondents for the questionnaire are those States that implemented TANF before February 1997. States that implemented TANF later may also be surveyed.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses	Average burden hours per response	Total burden hours
TANF time limits	35	1	8	280
Estimated Total Annual Burden Hours				280

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 16, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–18134 Filed 7–19–01; 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: Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) Model Plan.

OMB No.: 0970–0075.

Description: States, including the District of Columbia, Tribes, tribal organizations and territories applying for LIHEAP block grant funds must submit an annual application (Model Plan) that meets the LIHEAP statutory and regulatory requirements prior to receiving Federal funds. A detailed application must be submitted every 3 years. Abbreviated applications may be submitted in alternate years. There have been minor changes in the Model Plan for clarity. There have been no substantive changes.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Model Plan	65	1	1	65
Abbreviated Model Plan	115	1	.33	38
Estimated Total Annual Burden Hours	.....	.....	.....	103

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 16, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–18167 Filed 7–19–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–484R]

Agency Information Collection Activities; Announcement of OMB Approval; Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishments Registration and Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishments Registration and Listing'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 19, 2001 (66 FR 5447), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0469. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18131 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1567]

Agency Information Collection Activities; Announcement of OMB Approval; Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 2, 2000 (65 FR 65858), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0045. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18132 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1666]

Agency Information Collection Activities; Announcement of OMB Approval; Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 3, 2001 (66 FR 372), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0305. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18133 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0063]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Devices; Current Good Manufacturing Practice (CGMP), Quality System (QS) Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Devices; Current Good Manufacturing Practice (CGMP), Quality System (QS) Regulation'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the**Federal Register** of May 31, 2001 (66 FR 29577), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0073. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 16, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18160 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0176]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 20, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies—(21 CFR Part 58)—(OMB Control Number 0910–0119)—Extension

Sections 409, 505, 512, and 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 360b, and 360e) and related statutes require manufacturers of food additives, human drugs and biological products, animal drugs, and medical devices to demonstrate the safety and utility of their product by submitting applications to FDA for research or marketing permits. Such applications contain, among other important items, full reports of all studies done to demonstrate product safety in man and/or other animals. In order to ensure adequate quality control for these studies and to provide an adequate degree of consumer protection, the agency issued the GLP regulations. The regulations specify minimum standards for the proper conduct of safety testing and contain sections on facilities, personnel, equipment, standard operating procedures (SOPs), test and control articles, quality assurance, protocol and conduct of a safety study, records and reports, and laboratory disqualification.

The GLP regulations contain requirements for the reporting of the results of quality assurance unit inspections, test and control article characterization, testing of mixtures of test and control articles with carriers, and an overall interpretation of nonclinical laboratory studies. The GLP regulations also contain recordkeeping requirements relating to the conduct of safety studies. Such records include: (1) Personnel job descriptions and summaries of training and experience; (2) master schedules, protocols and amendments thereto, inspection reports, and SOPs; (3) equipment inspection, maintenance, calibration, and testing records; (4) documentation of feed and water analyses and animal treatments; (5) test article accountability records; and (6) study documentation and raw data.

The information collected under GLP regulations is generally gathered by testing facilities routinely engaged in conducting toxicological studies and is used as part of an application for a research or marketing permit that is voluntarily submitted to FDA by persons desiring to market new products. The facilities that collect this information are typically operated by large entities, e.g., contract laboratories, sponsors of FDA-regulated products, universities, or government agencies. Failure to include the information in a filing to FDA would mean that agency scientific experts could not make a valid determination of product safety. FDA receives, reviews, and approves hundreds of new product applications each year based on information received. The recordkeeping requirements are necessary to document the proper conduct of a safety study, to assure the quality and integrity of the resulting final report, and to provide adequate proof of the safety of regulated products. FDA conducts onsite audits of records and reports, during its inspections of testing laboratories, to verify reliability of results submitted in applications.

In the **Federal Register** of April 30, 2001 (66 FR 21396), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Responses	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
58.35(b)(7)	300	60.25	18,075	1	18,075
58.185	300	60.25	18,075	27.65	499,774
Total					517,849

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
58.29(b)	300	20	6,000	.21	1,260
58.35(b)(1) through (b)(6) and (c)	300	270.76	81,228	3.36	279,926
58.63(b) and (c)	300	60	18,000	.09	1,620
58.81(a) through (c)	300	301.8	90,540	.14	12,676
58.90(c) and (g)	300	62.7	18,810	.13	2,445
58.105(a) and (b)	300	5	1,500	11.8	17,700
58.107(d)	300	1	300	4.25	1,275

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
58.113(a)	300	15.33	4,599	6.8	31,273
58.120	300	15.38	4,614	32.7	150,878
58.195	300	251.5	75,450	3.9	294,255
Total					793,308

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18130 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain device panels of the Medical Devices Advisory Committee, the National Mammography Quality Assurance Advisory Committee, the Device Good Manufacturing Practice Advisory Committee, and the Technical Electronic Products Radiation Safety Standards Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and those that will or may occur through August 31, 2002.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae for the device panels should be sent to Nancy J. Pluhowski, Advisory Panel Coordinator, Office of Device Evaluation (HFZ–400), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, e-mail: NJP@CDRH.FDA.GOV.

All nominations and curricula vitae for the National Mammography Quality Assurance Advisory Committee, excluding consumer representatives, should be sent to Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850.

All nominations and curricula vitae for industry representatives and government representatives for the Device Good Manufacturing Practice Advisory Committee should be sent to Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850.

All nominations and curricula vitae for government representatives and industry representatives for the Technical Electronic Product Radiation Safety Standards Committee should be sent to Orhan Suleiman, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850.

All nominations and curricula vitae for consumer representatives for the National Mammography Quality Assurance Advisory Committee, and general public representatives for the Device Good Manufacturing Practice Advisory Committee and the Technical Electronic Product Radiation Safety Standards Committee should be sent to Maureen Hess, Office of Consumer Affairs (HFE–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, e-mail: MHESS@OC.FDA.GOV.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, e-mail: KLW@CDRH.FDA.GOV.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for vacancies listed below.

1. *Anesthesiology and Respiratory Therapy Devices Panel*: Two vacancies occurring November 30, 2001; anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilatory support, pharmacology, physiology, or the effects and complications of anesthesia.

2. *Circulatory System Devices Panel*: Two vacancies immediately; interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.

3. *Dental Products Panel*: Two vacancies immediately; dentists who have expertise in the areas of lasers, temporomandibular joint implants and/or endodontics; or experts in tissue engineering and/or bone physiology relative to the oral and maxillofacial area.

4. *Ear, Nose, and Throat Devices Panel*: Three vacancies occurring October 31, 2001; otologists, neurotologists, audiologists, hearing scientists, and electrophysiologists.

5. *Gastroenterology and Urology Devices Panel*: Three vacancies occurring December 31, 2001; urologists, gastroenterologists, and biostatisticians.

6. *General and Plastic Surgery Devices Panel*: Three vacancies immediately, three vacancies occurring August 31, 2002; general surgeons, plastic surgeons, biomaterials experts, laser experts, wound healing experts or endoscopic surgery experts.

7. *General Hospital and Personal Use Devices Panel*: Four vacancies immediately, three vacancies occurring December 31, 2001; internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers or microbiologists/infection control practitioners or experts.

8. *Immunology Devices Panel*: One vacancy occurring February 28, 2002; persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.

9. *Medical Devices Dispute Resolution Panel*: One vacancy immediately;

experts with broad, cross-cutting scientific, clinical, analytical or mediation skills.

10. *Microbiology Devices Panel*: Two vacancies occurring February 28, 2002; infectious disease clinicians, e.g., pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, mycologists; clinical microbiologists; clinical microbiology laboratory directors, and clinical virologists with expertise in clinical diagnosis and in vitro diagnostic assays, e.g., hepatologists; molecular biologists.

11. *Neurological Devices Panel*: Three vacancies occurring November 30, 2001; neurosurgeons (cerebrovascular and pediatric), neurologists (pain management and movement disorders), interventional neuroradiologists, or biostatisticians.

12. *Obstetrics and Gynecology Devices Panel*: Two vacancies occurring January 31, 2002; experts in perinatology, embryology, reproductive endocrinology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, and contraception; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; and experts in gynecology in the older patient.

13. *Orthopaedic and Rehabilitation Devices Panel*: Five vacancies immediately; doctors of medicine or philosophy with experience in tissue engineering, calcification or biomaterials; orthopedic surgeons experienced with prosthetic ligament devices, joint implants, or spinal instrumentation; physical therapists experienced in spinal cord injuries, neurophysiology, electrotherapy, and joint biomechanics; rheumatologists; or biomedical engineers.

14. *Radiological Devices Panel*: One vacancy immediately, two vacancies occurring January 31, 2002; physicians and scientists with expertise in nuclear medicine, diagnostic or therapeutic radiology, radiation physics, mammography, thermography, transillumination, hyperthermia cancer therapy, bone densitometry, magnetic resonance imaging, computed tomography, ultrasound imaging, statistical analysis, digital imaging and image processing, or computer-aided detection and diagnosis.

15. *National Mammography Quality Assurance Advisory Committee*: Four vacancies occurring January 31, 2002; two shall include physicians, practitioners, and other health professionals whose clinical practice, research specialization, or professional expertise include a significant focus on mammography; and two shall include consumer representatives from among national breast cancer or consumer health organizations with expertise in mammography.

16. *Device Good Manufacturing Practice Advisory Committee*: Three vacancies occurring May 31, 2002; one government representative, one industry representative, and one general public representative.

17. *Technical Electronic Product Radiation Safety Standards Committee*: Five vacancies occurring December 31, 2001, two government representatives, one industry representative, and two general public representatives.

Functions

Medical Devices Advisory Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions the Federal Food, Drug, and Cosmetic Act (the act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the act; advises on the necessity to ban a device; and responds to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between the FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and agency guidance and policies. The panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or agency decisions or actions.

National Mammography Quality Assurance Advisory Committee

The functions of the committee are to advise FDA on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities; (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and (9) determining the costs and benefits of compliance with these requirements.

Device Good Manufacturing Practice Advisory Committee

The functions of the committee are to review proposed regulations for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for manufacture, packaging, storage, installation, and servicing of devices, and make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines developed to assist the medical device industry in meeting the good manufacturing practice requirements, and provides advice with regard to any petition submitted by a

manufacturer for an exemption or variance from good manufacturing practice regulations.

Section 520 of the act (21 U.S.C. 360(j)), as amended, provides that the Device Good Manufacturing Practice Advisory Committee shall be composed of nine members as follows: (1) Three of the members shall be appointed from persons who are officers or employees of any Federal, State, or local government; (2) two shall be representatives of interests of the device manufacturing industry; (3) two shall be representatives of the interests of physicians and other health professionals; and (4) two shall be representatives of the interests of the general public.

Technical Electronic Product Radiation Safety Standards Committee

The function of the committee is to provide advice and consultation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Section 534(f) of the act (21 U.S.C. 360kk(f)), as amended by the Safe Medical Devices Act of 1990 provides that the Technical Electronic Product Radiation Safety Standards Committee include five members from governmental agencies, including State or Federal Governments, five members from the affected industries, and five members from the general public, of which at least one shall be a representative of organized labor.

Qualifications

Panels of the Medical Devices Advisory Committee

Persons nominated for membership on the panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are shown above. The term of office is up to 4 years, depending on the appointment date.

National Mammography Quality Assurance Advisory Committee

Persons nominated for membership should be physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography and individuals identified with consumer interests. Prior experience on Federal public advisory committees in the same or similar subject areas will also be considered relevant professional expertise. The particular needs are shown above. The term of office is up to 4 years, depending on the appointment date.

Device Good Manufacturing Practice Advisory Committee

Persons nominated for membership as a government representative or health professional should have knowledge of or expertise in any one or more of the following areas: Quality assurance concerning the design, manufacture, and use of medical devices. To be eligible for selection as a representative of the general public or industry, nominees should possess appropriate qualifications to understand and contribute to the committee's work. The particular needs are shown above. The term of office is up to 4 years, depending on the appointment date.

Technical Electronic Product Radiation Safety Standards Committee

Persons nominated must be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. The particular needs are shown above. The term of office is up to 4 years, depending on the appointment date.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels or advisory committees. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

Consumer/General Public Representatives

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Selection of members representing consumer interests is conducted through procedures that include use of a consortium of consumer organizations that has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Nominations shall include a complete curriculum vita of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or in any advisory committee. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: July 16, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–18161 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Children's Hospitals Graduate Medical Education (CHGME) Payment Program: Final Methodology for Determination of FTE Resident Count, Treatment of New Children's Teaching Hospitals, and Calculation of Indirect Medical Education Payment

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final notice.

SUMMARY: This notice sets forth final methodology for determining full time equivalent (FTE) resident count, treatment of new children's teaching hospitals, and calculation of indirect medical education (IME) payments for the Children's Hospitals Graduate Medical Education (CHGME) Payment program, authorized by section 340E of the Public Health Service Act (42 U.S.C. 256e), amended by Pub. L. 106–310, The Children's Health Act, 2000. In compliance with the Paperwork Reduction Act of 1995, the Department obtained Office of Management and Budget (OMB) approval of the data collections required and imposed on the public (OMB No. 0915–0247).

FOR FURTHER INFORMATION CONTACT: Ayah E. Johnson, Graduate Medical Education Branch, Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–1058 or e-mail address *ChildrensHospitalGME@hrsa.gov*.

SUPPLEMENTARY INFORMATION: The CHGME program, as authorized by section 340E of the Public Health Service (PHS) Act (the Act) (42 U.S.C. 256e), provides funds to children's hospitals to address disparity in the level of Federal funding for children's hospitals that results from Medicare funding for graduate medical education (GME). Pub. L. 106–310 amended the CHGME statute to continue the program until Federal Fiscal Year (FFY) 2005.

On March 1, 2001, the Secretary published a notice in the **Federal Register** (66 FR 12940) establishing final rules for eligibility, funding criteria, payment methodology and performance measures for the CHGME program. That notice also sought public comments on proposals for (1) The criteria for determining full time equivalent (FTE) resident count; (2) the treatment of new children's teaching hospitals with respect to resident count; and (3) the methodology for IME payments. During the comment period, the Department received comments from seventeen interested parties, including hospitals, hospital and professional associations, Medicare consulting companies, and law firms.

The Secretary thanks the respondents for the quality and thoroughness of their comments. As a result of these comments, the Department has made revisions and clarifications in this final notice. The comments and Department's responses to the comments, and the final rules are set forth below.

General Comments

Several respondents recommended that the CHGME program follow Medicare's rules as closely as possible: (1) Because these rules are well defined and are known to those children's hospitals that file Medicare cost reports (MCR); and (2) to conform to Congress' intent to provide funds to children's hospitals to address disparity in the level of Federal funding for children's hospitals that results from Medicare funding for graduate medical education. The respondents indicated that the Department should make exceptions to compliance with policy following Medicare principles only in those instances in which the unique characteristics of children's hospitals render the application of Medicare principles impossible or undesirable, and it should explain the specific rationale for each exception.

In the implementation of the CHGME program, the Department has incorporated applicable Medicare rules and regulations. However, it is important to recognize that fundamental differences exist between the Medicare and CHGME programs that make certain Medicare rules and regulations inapplicable to the CHGME program. For instance:

(1) The CHGME program includes children's hospitals that span the spectrum of pediatric patient care, including acute, rehabilitation, oncology, orthopedics, and long term care;

(2) The CHGME program includes resident training that occurs in all areas of the hospital complex for both DME and IME;

(3) The CHGME program is bound to the FFY in which appropriated funds must be distributed without the opportunity to reconcile funding across FFYs;

(4) The Medicare GME payments are associated with treatment of Medicare patients;

(5) The Medicare patient population is primarily non-pediatric; and

(6) The Medicare program monies come from a trust fund.

Determining FTE Resident Counts Beginning in FFY 2001

With the exception of some revisions for clarification, the criteria for determining FTE resident counts beginning in FFY 2001 are unchanged from those proposed in the March **Federal Register** notice. Beginning in FFY 2001, for hospitals, that report residents to Medicare, there will be an order of priority for acceptance of resident counts submitted to the CHGME program:

(1) For the most recent cost report periods ending on or before December 31, 1996, a hospital must report the latest settled FTE resident count or a ''preliminary'' fiscal intermediary (FI) determined resident count. All preliminary FI determined counts must be determined according to HCFA and Medicare criteria. Hospitals may not use the ''preliminary'' numbers that were used for the FFY 2000 CHGME program unless those FTE resident counts have since become finalized or are validated according to HCFA and Medicare standards.

(2) For settled cost reports in other years, the CHGME program will accept the latest settled cost report. If a settled cost report has been reopened, the CHGME program will accept the latest settled count or, if available, the most recent ''preliminary'' FI determined FTE count.

(3) For unsettled cost reports, the CHGME program will accept in order of priority:

(a) The most recent preliminary FI determined FTE resident count prior to the application deadline; if not available, then

(b) The amended filed FTE resident count; if not available then

(c) The as filed FTE resident count.

For hospitals that do not report residents to Medicare (i.e., file low or no utilization cost reports) but have been operating a residency training program and participated in the CHGME program in FFY 2000, the calculation of FTE resident counts remains unchanged from the FFY 2000 application. Unlike the FFY 2000 applications, however, beginning in FFY 2001, the CHGME program requires hospitals to report FTE resident counts based on the hospital cost reporting period rather than on the FFY. In the June 19, 2000, **Federal Register** notice the Department provided examples of how these hospitals could determine FTE resident counts for the 1996 cap year and the 3-year rolling average. The CHGME program will accept this methodology for the 1996, 1998 and 1999 cost reporting periods.

If these hospitals wish to revise their FTE resident counts for these cost reporting periods, they must submit a detailed explanation of the revision with supporting documentation. The supporting documentation must be in compliance with HCFA/Medicare standards used to determine FTE resident counts (e.g., rotation schedules).

Beginning with the cost report period ending in 2000, these hospitals will be required to use the methodology described in 42 CFR 413.86(f)(2) to determine FTE resident counts; that is, to measure the amount of time that a resident works during the cost report period based on the number of days. In addition, these hospitals will continue to be required to apply Medicare standards for documenting the residents to be counted and calculating their FTE time for purposes of determining an FTE resident count.

Hospitals which did not report residents to Medicare and did not participate in the CHGME program in FFY 2000, although they were training residents at that time, are required to use the methodology described in 42 CFR 413.86(f)(2) to determine their FTE resident count for their cap year and 3-year rolling average. Like all hospitals which do not report residents to Medicare, they will be required to apply Medicare standards for documenting the calculating of their FTE resident counts.

Some hospitals have filed a combination of full, low utilization, and no utilization cost reports. For these hospitals, the Department requires that they file the actual FTE resident counts reported for those cost report periods where an E–3, Part IV worksheet has been filed. For those cost report periods where a low or no utilization cost report period was used, the hospitals should recreate their FTE resident count using the methodology referenced above.

Several respondents recommended that resident counts used for distribution of funds after FFY 2002 for all hospitals be based on Medicare cost reporting data. The respondents indicated that such a change should include sufficient time to resolve any technical issues that arise for hospitals that did not report residents in 1996 for determination of their resident cap. They noted that, while in the short term, it is necessary and appropriate to accommodate those hospitals that did not report residents to Medicare, it is important over the longer term for consistency and equity in the resident counting methodology that all eligible hospitals file resident counts on their Medicare cost reports.

The Department does not have the option of requiring resident counts used for distribution of funds to be based on Medicare cost reporting data since section 340E(e)(1) of the CHGME statute requires that:

> * * * interim payments to each individual hospital shall be based on the number of residents reported in the hospital's most recently filed Medicare cost report prior to the application date for the Federal fiscal year for which the interim payment amounts are established. In the case of a hospital that does not report residents on a Medicare cost report, such interim payments shall be based on the number of residents trained during the hospital's most recently completed Medicare cost report filing period.

Several respondents requested that HRSA clarify or define a ''preliminary FI determined resident count'' and indicated that some FIs may not provide a ''preliminary FI determined resident count'' prior to the formal resettlement of the revised cost report.

To clarify, a ''preliminary FI determined resident count'' with respect to a settled cost report that has been reopened is any resident count that the FI has determined during the normal course of cost report review (e.g., audit) prior to formal resettlement of the cost report. For example, if the FI and the hospital have negotiated the FTE resident count but not yet completed the paperwork to officially settle the reopened cost report, the hospital can submit the negotiated FTE resident count as a statement written by the FI describing the negotiated FTE resident count as ''preliminary'' to the completion of the resettlement paperwork. The CHGME program will not accept any FTE resident counts from amended reopened cost reports unless the FI submits it to the CHGME program as a valid ''preliminary'' FTE resident count.

For cost reports that have never been settled, a ''preliminary'' FTE resident count issued by an FI would be any resident count the FI has generated during the normal course of cost report review (e.g., desk review) prior to settlement of the cost report.

In some cases during the FFY 2000 CHGME application process, FIs issued ''preliminary'' numbers for FTE resident counts for some of the children's hospitals. Hospitals may not use these ''preliminary'' numbers for the FFY 2001 or future CHGME program application unless those FTE resident counts have since become finalized or are validated according to HCFA and Medicare standards through the normal course of business.

Regarding the use of Medicare standards in issuing ''preliminary'' FTE resident counts, one respondent indicated it was unaware of Medicare standards and that individual intermediary standards are not published.

HCFA provides numerous manuals for FIs and hospitals which outline the standards and definitions used in preparation and review of Medicare cost reports. These manuals are available electronically on the Internet at *http://www.hcfa.gov* and for purchase through the National Technical Information Service (NTIS) Clearinghouse. If hospitals have questions or concerns about their FI's interpretation/application of these standards, they should communicate with their FI or HCFA Regional Offices.

Several respondents raised the issue of applying a written agreement for purposes of training residents between a hospital and a non-hospital site retrospectively in order to count FTE residents rotating through those non-hospital sites.

As stated in the March 1, 2001 **Federal Register** notice, all resident training in non-hospital sites may be included in the FTE resident count as long as the hospital and non-hospital site are in compliance with 42 CFR 413.86(f)(3) and (4).

New Children's Teaching Hospitals

The Department is making final the definition of ''new children's teaching hospitals'' as proposed in the March 1 **Federal Register** notice. For purpose of the CHGME program, a ''new children's teaching hospital'' is a hospital which:

1. Has its own Medicare provider number as a children's hospital described in Sec. 1886(d)(1)(B)(iii) of the Social Security Act but did not train residents until it began training residents from an already existing program, less than three cost report periods prior to the FFY in which CHGME payments are being made; and

2. Has historically participated in a residency training program (e.g., a pediatric department within a larger teaching hospital) and subsequently receives its own Medicare provider number as a children's hospital described in Sec. 1886(d)(1)(B)(iii) of the Social Security Act.

''New children's teaching hospitals'' are distinct from those teaching hospitals that are participating in a new medical residency training program defined under 42 CFR 413.86(g)(12). Medicare regulations at 42 CFR 413.86(g)(6)(i) and (7) set forth criteria for applying the caps and rolling averages in these teaching hospitals with new medical residency training programs.

Establishing the Cap for New Children's Teaching Hospitals

Unlike children's hospitals that can receive adjustments to their caps for new residency training programs according to 42 CFR 413.86(g)(6), ''new children's teaching hospitals'' are treated like all other hospitals that have trained residents for 3 years after the first program began training residents,

as explained in 42 CFR 413.86(g)(6)(i)(C). According to 42 CFR 413.86(g)(4), the hospital's FTE resident cap is based on the unweighted FTE resident count from the most recently completed cost report period ending on or before December 31, 1996. Since ''new children's teaching hospitals'' would not have trained residents during the most recent Medicare cost reporting period ending on or before December 31, 1996, they would have a cap of zero.

To provide an adjustment to the cap of zero, the CHGME program will allow these hospitals to add FTE residents to their cap based on the following-described Medicare regulations:

1. The formation of a new residency program within the first 3 years after the first program begins training residents as described in 42 CFR 413.86(g)(6); or

2. The execution of an affiliation agreement for an aggregate cap, as set forth in 42 CFR 413.86(g)(4) and 63 FR 26338, published in the **Federal Register** on May 12, 1998, with the following exceptions:

a. A ''new children's teaching hospital'' participating in the CHGME program for the first year must establish an effective date of the agreement for the purposes of the CHGME program. For the first year, unless otherwise specified, the Department will use as the effective date of the affiliation agreement for an aggregate cap the date that the hospital becomes eligible for the CHGME program. This effective date will only apply to the CHGME program. A hospital must also have an effective date of July 1 for the Medicare program. Subsequent to the first year of the affiliation agreement, the effective date must comply with the above cited **Federal Register** final rule which specifies an effective date of July 1 for all affiliation agreements. The CHGME program allows this exception because hospitals must meet eligibility criteria and have their caps determined prior to the CHGME application deadline. If the CHGME program application deadline occurs before July 1, some hospitals would have a cap of zero and thus be excluded from receiving funds. By deviating from the prescribed Medicare final rule, the CHGME program will not place some hospitals in this position.

b. Unlike the Medicare program, for the first year, the CHGME program will not prorate the cap based on the effective date of the cap. Instead, the full value of the cap as determined by the affiliation agreement will be used.

Establishing FTE Resident Counts for New Children's Teaching Hospitals

In general, the FTE resident count from each hospital reflects the residents trained during the Medicare cost report period, limited by the cap (the unweighted allopathic and osteopathic FTE resident count from the most recent cost report period ending on or before December 31, 1996). Payments to each hospital are based on the average of the FTE resident count for the most recent Medicare cost report and the prior two cost reports (3-year rolling average), subject to funds available for DME and IME, respectively.

For establishing FTE resident counts, ''new children's teaching hospitals'' are divided into two categories: (1) Those training residents from an existing residency program that received and will continue to receive funds under the CHGME program; and (2) those training residents from an existing residency program that has never received funds under the CHGME program (i.e., residents that have not previously been claimed for payment under the CHGME program).

''New Children's Teaching Hospitals'' Training Residents Previously Claimed For Payment Under the CHGME Program: FTE Resident Count

The Department requires ''new children's teaching hospitals'' training residents who were originally trained in a program that received and will continue to receive funds under the CHGME program to wait until they have completed a medicare cost report period before applying for payments from the CHGME program. The CHGME program would have provided payment to the hospital originally training the residents, prior to the completion of a Medicare cost report period by the new children's teaching hospital, and would not want to pay two hospitals for training the same residents.

These ''new children's teaching hospitals'' must apply the 3-year rolling average according to Medicare regulations at 42 CFR 413.86(g)(5). Over a 3-year period, the ''new children's teaching hospital'' will gradually increase its number of FTE residents that can be claimed on the CHGME application as the children's hospital that originally trained those FTE residents gradually decreases its resident count.

''New Children's Teaching Hospitals'' Training Residents Not Previously Claimed for Payment Under the CHGME Program

Since payments under the CHGME program are based on FTE resident counts from a completed cost report filing period, ''new children's teaching hospitals'' training residents never previously claimed for CHGME payment that have not completed a cost report filing period at the time of the CHGME program application would not have an FTE resident count for a full Medicare cost reporting period to report to the program. These ''new children's teaching hospitals'' must submit a partial-year FTE resident count in their initial applications to the CHGME program according to the following methodology:

a. Divide the number of FTE residents trained during the period from the day the children's hospital becomes eligible for the CHGME program to the CHGME application deadline by the number of days during this period to produce the average number of FTEs per day.

b. Multiply the average number of FTEs per day by the number of days the hospital will train residents during the FFY in which payments are being made.

The concept of converting a partial period into a full cost report period is found in the Medicare regulations at 42 CFR 413.86(g)(4) and (e)(5)(ii). Since the CHGME program is paying hospitals for training residents during the FFY for which payments are being made, the Department will convert a partial training period to reflect the amount of time the hospital will train residents during the FFY for which payments are being made. Although this methodology delineates the method by which partial-year residents are counted, it is important to note that all counts are subjected to the cap set by the affiliation agreement.

After the initial application year, payments to ''new children's teaching hospitals'' training residents never previously claimed for CHGME payment will be based on the actual FTE resident count from the most recently completed Medicare cost report period. Once these hospitals have completed three Medicare cost report periods, the 3-year rolling average will apply.

Under Medicare, hospitals training residents that are not in a new residency program, as defined in 42 CFR 413.86(g)(12), are subjected to the 3-year rolling average. For example, under Medicare, in the first year these hospitals would calculate the 3-year rolling average as follows: [FTE resident count for current year + 0 (FTE residents for prior cost report period) + 0 (FTE residents per penultimate cost report period)] divided by three (3).

One purpose of this Medicare policy is to avoid paying two hospitals for the same residents. Over the course of 3 years the hospital which was originally training the residents ''rolls down'' its FTE resident count and the hospital which is assuming training ''rolls up'' its FTE resident count.

The rationale adopted by the CHGME program in deviating from this Medicare policy is that, for the ''new children's teaching hospitals'' training residents that were never previously claimed for CHGME payment, the issue of double payment for residents is not relevant since the program is not currently paying for them. Therefore, to treat all hospitals participating in the CHGME program equitably, the Department will not impose a 3-year rolling average on the FTE residents counts until these ''new children's teaching hospitals'' have completed three cost reporting periods.

Determining Indirect Medical Education (IME) Payments to Hospitals

The March **Federal Register** notice invited comments on the proposed methodology for calculating IME payments organized by: (1) The purpose and use of payments under the program, (2) case mix, (3) number of FTE residents, (4) teaching intensity factor, (5) patient volume, (6) outpatient services, and (7) determination of payments. A discussion of the comments received and the Department's responses follows.

Purpose and Use of IME Payments

The CHGME statute requires the Secretary to make payments to children's hospitals for IME associated with operating approved graduate medical residency training programs for each of fiscal years 2000 through 2005. Section 340E(b)(1)(B) describes IME payments as covering ''expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.'' Section 340E(d)(2) of the Act requires the Secretary to determine IME payments by considering:

1. Variations in case mix among children's hospitals; and
2. The hospitals' number of FTE residents in approved training programs.

The Department utilized the broadest interpretation of this legislative mandate to determine that IME payments determined for purposes of the CHGME program should reflect the indirect costs of GME as defined by statute throughout the entire hospital complex, similar to the allowances for the calculation of DME payments unlike Medicare which limits IME payment adjustments to certain areas of the hospital.

Determination of Case Mix

The determination of case mix is unchanged from that set forth in the March notice. Beginning in FFY 2001, all applicant hospitals must submit a case mix index (CMI), based on the discharges from the most recently completed cost reporting period, using HCFA–DRG Version 17 with the appropriate HCFA Version 17 weights reported to the ten-thousandth decimal place. All DRGs must be included in the calculation of this CMI. In subsequent years, the version of the HCFA–DRG, to be used by hospitals, will be updated annually. To determine which version of the HCFA–DRG grouper and weights hospitals will use in completing an application to the CHGME program, the following methodology will be used:

1. Based on the application deadline, the year end of the most recently completed cost reporting period will be determined for the majority of applicant hospitals.

2. The version of the HCFA–DRG grouper and weights used to calculate the CMI for the FFY corresponding to the year end of the most recently completed cost reporting period for the majority of applicant hospitals will be used to calculate the CMI.

If a children's hospital eligible to participate in the CHGME program has not completed a Medicare cost reporting period prior to submission of an application to the CHGME program, it would base its CMI on discharges from the day it became eligible fo the CHGME program until the CHGME application deadline.

Several respondents requested that DRG 391 be excluded from the calculation of CMI beginning in FFY 2000. These respondents argued that, as only a few hospitals participating in the CHGME program would actually use this DRG code, related to treatment of normal or healthy newborns, the exclusion of this DRG would assist in creating equity among the hospitals in the program.

The Department will include all DRGs in the calculation of its CMI because the activity of all areas of the hospital complex and the severity of illness among the inpatient population that the hospital serves need to be reflected in the hospital's CMI in order to treat all hospitals equitably. The IME payment is meant to reflect the resources used to treat the more severely ill patients in children's hospitals.

Several respondents suggested alterntive methodologies for calculating CMI, including the Resource-Based Relative Value Scale (RBRVS) or the All Patient Refined (APR)–DRGs and APR–DRG relative weights. In addition, several respondents supported the Department's exploration of developing a CMI methodology that is more reflective of the resource intensity of pediatric care.

The Department continues to recognize that the current CMI may not be reflective of the relative resource utilization in children's hospitals, particularly those providing specialized services, such as rehabilitation and will continue to investigate the feasibility of developing a CMI that is more reflective of the relative resource utilization experienced by children's hospitals. The Department anticipates that this effort will be multi-year. Any analyses and resulting recommendations would be published in subsequent **Federal Register** publications.

Determining the Number of FTE Residents for IME Payments

The criteria for determining FTE residents for IME payments is different from those proposed. In the March 1, 2001 **Federal Register** notice, the Secretary proposed to determine FTE resident counts for IME payment calculation using the ''caps and rolling averages'' consistent with Medicare regulation 42 CFR 412.105(f) with the exception of 42 CFR 412.105(f)(1)(ii)(A). The Department's final criteria for determining the FTE resident count for IME payments include all areas of the hospital complex as specified in 42 CFR 413.86(f)(1), the regulations used to determine FTE resident counts for DME. Time spent by residents on required research is also included if it is part of the resiency program and the resident carries out the research in either: (1) The children's hospital (clinical or bench research); or (2) in a nonhospital site where the research involves direct patient care and the salaries of both the resident and supervising faculty are paid by the children's hospital. Since the FTE resident count used to calculate both DME and IME payments will reflect residents rotating through all areas of the hospital complex, the unweighted FTE resident count is the same for the DME and IME (MCR worksheet E–3, Part IV, line 3.05).

The criteria used by the Department for hospitals reporting FTE resident counts will be the same for IME as they are for DME (see description in previous section). ''New children's teaching hospitals'' that have not completed a cost report period would use a partial-year FTE resident count methodology similar to the methodology used to determine FTE resident counts for DME payments (see previous section).

The calculation of FTE resident counts remains unchanged from the FFY 2000 application for hospitals that do not report residents to Medicare, have been operating a residency training

program and participated in the CHGME program in FFY 2000. Unlike the FFY 2000 applications, however, beginning in FFY 2001, the CHGME program requires hospitals to report FTE resident counts based on hospital cost reporting period rather than on FFY. In the June 19, 2000 **Federal Register** notice the Department provided examples of how these hospitals could determine FTE resident counts for the 1996 cap year and the 3-year rolling average. The CHGME program will accept this methodology for the 1996, 1998 and 1999 cost reporting periods.

If these hospitals wish to revise their FTE resident counts for these cost reporting periods, they must submit a detailed explanation of the revision with supporting documentation that is in compliance with HCFA/Medicare standards used to determine FTE resident counts (*e.g.*, rotation schedules).

Beginning with the cost report period ending in 2000, these hospitals will be required to use the methodology described in 42 CFR 413.86(f)(2), without application of the weighting factors described in 42 CFR 413.86(g)(1), (2), and (3), to determine total unweighted FTE resident counts. Medicare measures the amount of time based on the number of days during the cost reporting period that a resident works. In addition these hospitals will be required to apply Medicare standards for documenting the counting of residents and calculation of their FTE time for purposes of determining an FTE resident count.

Hospitals which did not report residents to Medicare and did not participate in the CHGME program in FFY 2000 although they were training residents at that time are required to use the methodology described in 42 CFR 413.86(f)(2), without application of the weighting factors described in 42 CFR 413.86(g)(1), (2), and (3), to determine their FTE resident count for their cap and 3-year rolling average. Like all hospitals not reporting residents to Medicare, they will be required to apply Medicare standards for documenting the calculating of their FTE resident counts.

Some hospitals file a combination of full, low utilization, and no utilization cost reports. For these hospitals, the Department requires that they file the actual FTE resident counts reported for those cost report periods where an E–3, Part IV worksheet has been filed. For those cost report periods where a low or no utilization cost report period was used, the hospitals should recreate their FTE resident count using the methodology described above.

Caps and Rolling Average

Beginning with FY 2001, the Secretary will apply the ''caps and rolling averages'', consistent with the Medicare regulatory section 42 CFR 412.105(f), with the exception of 42 CFR 412.105(f)(1)(ii). In place of this subsection, the Department will use the criteria of 42 CFR 413.86(f)(1), which define FTE counts for DME.

The Department received a variety of comments on application of the cap and rolling averages to calculating IME payments. Several respondents recommended that the Department postpone the application of the cap and rolling averages to the FTE resident count for calculating IME payments until after the FFY 2002 application deadline so hospitals which reported residents to Medicare for the cap year (most recently completed cost reporting period ending on or before December 31, 1996) would have adequate time to resolve any outstanding issues with their FIs related to this cost reporting period. Other respondents suggested that the Department not apply the caps and rolling average to the IME at all, as the CHGME statute does not require it.

The Department will apply the cap and rolling average to the calculation of IME payments beginning with FFY 2001 in order to comply as closely as possible with Medicare rules and regulations. The Secretary maintains that hospitals which report residents on Medicare cost reports have been aware of an FTE cap as early as their 1998-cost report and assumes that these hospitals are reporting an accurate FTE cap number.

In addition to the above comments, two respondents argued that if the Department were to implement the cap and rolling averages on the FTE resident count used in the IME payments, then the cap should be based on the unweighted FTE resident count from the most recently completed cost reporting period ending on or before December 31, 2000, to correspond with the initial year of the CHGME program, FFY 2000. The basis for their argument was that previously, children's hospitals did not receive IME payments and that, in some cases, the hospitals may have added residency programs after the cap year that could not be counted toward the cap on residents. In addition, there was a misunderstanding that hospitals that did not report residents on Medicare cost reports could base their unweighted FTE resident cap on a year other than the most recently completed cost reporting period ending on or before December 31, 1996.

To clarify the policy regarding the year upon which the unweighted FTE resident count is based, all hospitals must use the most recently completed cost report period ending on or before December 31, 1996, to determine the unweighted FTE resident count that would be used as the cap for calculating of IME payments. This standard definition applies to all hospitals participating in the CHGME program regardless of whether or not they report residents on their Medicare cost reports. If a hospital certifies in its application that it has based its cap on the most recent cost reporting period ending on or before December 31, 1996, and subsequent to a CHGME program review/audit, it is discovered that a more recent cost reporting period was used to determine the cap, that hospital would be subject to prosecution by the Federal Government as it would have committed fraud.

Teaching Intensity Factor

In the March notice, the Department invited comments on:

1. The proposed continuation of the use of the Medicare residents-to-bed ratio (IRB)-based teaching intensity factor in the calculation of IME payments. The CHGME program would use the most current PPS IRB in its calculation of IME payments;

2. Application of a cap on the IRB ratio, similar to the cap applied by the Medicare program, 42 CFR 412.105(a)(1), whereby the ratio may not exceed the ratio for the hospital's most recent prior cost reporting period. Application of this cap will not be initiated until FFY 2002 due to the proposed change in the definition of bed count;

3. Suggestions on alternative teaching intensity factors, such as the Medicare resident-to-average daily census (RADC)-based teaching intensity factor (2.8 percent per 0.1 percent increase in RADC ratio) or any other analytically justified teaching intensity factor; and

4. The proposed definition of ''bed count'' to be used in calculating the Medicare IRB teaching intensity factor—the sum of all available beds per day in the most recently completed cost report filing period, including beds and bassinets in the healthy newborn nursery, divided by the number of days in that period. If a children's hospital eligible to participate in the CHGME program has not completed a Medicare cost report period prior to submission of an application to CHGME program, it would base its ''bed count'' on the sum of all available beds per day, including beds and bassinets in the healthy newborn nursery, in the period from the day it became eligible for the CHGME program until the CHGME application

deadline, divided by the number of days in that period.

Teaching Intensity Factor

Beginning in FFY 2001, the Department will use the IRB ratio to determine IME payments. The Department will use the same teaching intensity factor that is used by the Medicare Inpatient PPS in calculating its operating IME adjustment for the FFY in which payments are being made.

One respondent encouraged the use of the resident-to-average daily census (RADC) ratio in factoring in teaching intensity, because the RADC ratio measures actual utilization that occurs in the inpatient unit and thus provides a more realistic measure of intensity. Three respondents supported using the Medicare methodology of computing the number of residents per available bed, as consistency with Medicare is desirable without a compelling reason to depart from the Medicare formula.

The Department intends to continue to assess various teaching intensity factors and formulas designed to capture the IME costs associated with caring for more severely ill patients in a children's hospital.

A Cap on the IRB Ratio

To comply as closely as possible with Medicare rules and regulations, beginning in FFY 2002, the Department will apply a cap on the IRB ratio, similar to the cap applied by the Medicare program pursuant to regulations at 42 CFR 412.105(a)(1), whereby the ratio may not exceed the ratio for the hospital's most recent prior cost reporting period. For those hospitals whose IRB ratio changes, there will be a one-year delay in the implementation of the revised IRB.

Beds To Be Included in Calculation of Bed Count

Beginning in FFY 2001, a bed is defined, for the purposes of the CHGME program, as an adult or pediatric bed, including beds or bassinets assigned to healthy newborns, available for lodging inpatients, including beds in intensive care units, coronary care units, neonatal intensive care units, short stay units, and other special care inpatient hospital units. Beds in the following locations are excluded from the definition: Labor rooms, post-anesthesia or post-operative recovery rooms, outpatient areas, emergency rooms, ancillary departments, nurses' and other staff residences, and other such areas as are regularly maintained and utilized for purposes other than inpatient lodging.

Beginning in FFY 2001, children's hospitals will calculate bed count to be used in calculation of the teaching intensity factor used to determine IME payments using the following methodology: The sum of all available inpatient beds per day within the hospital complex in the most recently completed cost report filing period divided by the number of days in that period. If a children's hospital, eligible to participate in the CHGME program, has not completed a Medicare cost reporting period prior to submission of an application to the CHGME program, it calculates its ''bed count'' using a prorated number. The prorated number is based on the sum of all available inpatient beds per day within the hospital complex in the period from the day it became eligible for the CHGME program until the CHGME application deadline, divided by the number of days during that period.

To be considered an available bed, a bed must be permanently maintained for lodging inpatients. It must be available for use and housed in patient rooms or wards (i.e., not in corridors or temporary beds). Thus, beds in a completely or partially closed wing of the facility are considered available only if the hospital put the beds into use when they are needed. The term ''available beds'' as used for the purpose of counting beds is not intended to capture the day-to-day fluctuations in patient rooms and wards being used. Rather, the count is intended to capture changes in the size of a facility as beds are added to or taken out of service.

Several respondents recommended that the count of available beds used in the intensity factor exclude beds/bassinets used in the ''well-baby'' nursery as this would be consistent with the Medicare policy. In addition, other respondents indicated that the exclusion or inclusion of short stay or observation beds should not be each individual hospital's determination—it should be program-wide policy consistent with Medicare policy.

The Medicare definition and regulations on counting beds are inapplicable to the CHGME program due to the fundamental differences between the two programs. Therefore, the Department has defined ''bed'' to best carry out the purpose of the CHGME program.

Although, traditionally, Medicare has excluded beds and bassinets used in the ''well-baby'' nursery, it is the understanding of the CHGME program that this is primarily due to the fact that beds and discharges from the ''well-baby'' nursery have not been factored into the calculation of Medicare payments because there is no Medicare utilization attributable to this part of the hospital. As all areas of the hospital complex are included in the determination of IME payments for the CHGME program, the Department feels that this includes all relevant available inpatient beds that are utilized within the hospital as defined above.

In addition, if the Department were to follow Medicare policy, as stated in Medicare program manual HCFA Pub. 15–1 S. 2405.3.G, on the definition of beds to be included in the bed count, beds in hospital-based skilled nursing facilities or in any inpatient area(s) of the facility not certified as an acute care hospital (e.g., long term care beds) or beds in excluded units (e.g., rehabilitation, psychiatric) would need to be excluded from the definition of beds used by the CHGME program in addition to the exclusion of beds/bassinets in the ''well-baby'' nursery. Because the hospitals participating in the CHGME program are not limited to acute care hospitals and the Medicare definition of bed count refers only to acute care beds, the Department believes that the inclusion of all of these beds would be an equitable treatment of all hospitals participating in the CHGME program.

The Department has followed the Medicare policy as closely as possible (see definition above) regarding the inclusion or exclusion of short stay or observation beds. Hospitals participating in the CHGME program must certify the accuracy of the numbers reported on their applications. Hospitals reporting bed counts that include other than inpatient beds are subject to prosecution for fraud by the Federal Government.

Patient Volume

As set forth in the March notice, the Department will use inpatient discharges for the hospital's most recently completed Medicare cost report filing period as the measure of patient volume for IME payments. The hospital should include all inpatient discharges from all parts of the hospital complex.

If a children's hospital eligible to participate in the CHGME program has not completed a Medicare cost report period prior to submission of an application to the CHGME program, its patient volume will be calculated by the following methodology:

a. Divide the number of inpatient discharges from the date the hospital became eligible to the CHGME application deadline by the number of days during this period to produce the average number of discharges per day.

b. Multiply the average number of discharges per day by the number of days the hospital will provide inpatient

care as a hospital eligible to participate in the CHGME program during the FFY in which payments are being made.

One respondent comment that accounting for discharges in the IME payment formula is unnecessary, since it is not a factor for Medicare, and that volume would be reflected by the number of residents in the interns and residents to bed (IRB) ratio.

The Department disagrees with this comment. Since the Medicare IME adjustment is an increase in the PPS payment based on a single discharge, the number of discharges is a critical factor in determining how much IME adjustment a hospital receives from HCFA upon settlement of the cost report by Medicare. For the CHGME program, volume, as determined by the number of discharges, is one of the measures of resource utilization in the children's hospitals.

The FTE resident count in the IRB ratio reflects teaching intensity, not patient volume. The Department assumes that the respondent believes that a hospital with more residents would see a larger volume of inpatients; however, since residents rotating through the outpatient parts of the hospital are included in the FTE resident count, a hospital could have few discharges and a large number of residents.

Outpatient Services

Several respondents were in support of the Department's proposed development of a factor to indicate the resources associated with training in outpatient settings. They suggested that this factor include the development of a case mix index that is more reflective of the relative resource utilization experienced by children's hospitals in both an inpatient and outpatient setting. Other respondents were not in favor of the Department pursuing this avenue of investigation and encouraged the Department to rely on the work being done by HCFA in this area.

Currently HCFA does not have an IME adjustment factor for the outpatient PPS; however, it is collecting data to determine if there is a need for such an adjustment. The CHGME program will consider HCFA's research in addition to pursuing the issue independently.

Determination of IME Payments

Beginning in FFY 2001, the Department will use the following formula for calculating IME payments:

$$\text{IME Pay}_i = Z_{ime} * \frac{NoD_i * CMI_i * (WI_i * .711 + .289) * IME}{\sum_{i=1}^{m} NoD_i * CMI_i * (WI_i * .711 + .289) * IME}$$

The following variables will be used in the formula to determine IME payments:

NoD = number of discharges for hospital

CMI = average case mix index for hospital

WI = area wage index for hospital

IME = IME adjustment/teaching intensity factor for hospital. Currently, the teaching intensity factor is: $1.6((1+\text{residents}_i\text{-to-beds}_i \text{ ratio})^{.405} - 1)$

Z_{ime} = total dollars available for CHGME program IME payments

IME Pay = total IME payments to hospital

i = individual hospital

m = total number of hospitals participating in the CHGME program

residents = average number of unweighted FTE residents in the most recently completed cost reporting period and the prior two cost reporting periods with application of the cap.

beds = sum of all available beds, including beds and bassinets in the healthy newborn nursery, in the most recently completed cost report filing period, divided by the number of days in that period.

This formula differs from that published in the March notice in that it omits the adjustment factor for hospitals with average lengths of stay greater than 30 days.

Hospitals With Average Length of Stay Greater Than 30 Days

In the March notice, the Department proposed to apply an adjustment factor in the calculation of IME payments for children's hospitals with average lengths of stay greater than or equal to 30 days. These hospitals provide a variety of services, including rehabilitative services, that requires their patients to remain as inpatients for a prolonged period of time. The Department found that the FFY 2000 formula for determining CHGME IME payments may have disadvantaged these hospitals.

Since the length of stay is a major factor in determining the relative costliness of an inpatient stay, the Department proposed an adjustment factor based on the average length of stay (ALOS) to more adequately reflect the relative costliness of patients treated by the children's hospitals with significantly long lengths of stay. For hospitals with ALOS greater than or equal to 30 days, the adjustment factor proposed was the ALOS for the individual hospital divided by the average ALOS for all hospitals with ALOS less than 30 days.

Several respondents supported the principle of adjusting the IME payments for those children's hospitals with average lengths of stay greater than or equal to 30 days as these hospitals are demonstrably different from all other children's hospitals. They noted that it is important that hospitals providing the types of services that require prolonged inpatient lengths of stay (e.g., rehabilitation) not be penalized for providing such services, as length of stay is a major factor in the relative costliness of an inpatient stay. However, the respondents indicated that the aggregate impact of an adjustment would be minimal, since it would involve only a very few small hospitals, and among them, they collectively train only a very few residents. These respondents recommended that HRSA make available the analysis underlying this particular adjustment and seek further comment before making the adjustment final and implementing it.

The Department will postpone the implementation of an adjustment factor based on ALOS to the IME payment formula until it conducts additional analyses. These analyses and subsequent proposed recommendations related to the IME payment formula will be published in a future **Federal Register** notice.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act (RFA of 1980), if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives of costs, of benefits, of

incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department has determined that the only burden this action will impose on children's hospitals is the resources required to submit an application to the CHGME program. Therefore, in accordance with the RFA and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this action will have a significant impact on a substantial number of small entities in that this action will provide significant funding to eligible children's hospitals. However, since this action will not impose a significant burden on a substantial number of small entities, we have not examined any alternatives for reducing the burden on children's hospitals. The Secretary has also determined that this action does not meet criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy of Federal expenditures.

We have determined that the proposed rule is not a ''major rule'' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, the proposed rule will not have effects on State, local and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Further, Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this action under the threshold criteria of Executive Order 13132, Federalism, and, therefore, have determined that this action would not have substantial direct effects on the rights, roles, and responsibilities of States.

Paperwork Reduction Act of 1995

In accordance with section 3507(a) of the Paperwork Reduction Act (PRA) of 1995, the Department is required to solicit public comments, and receive final Office of Management and Budget (OMB) approval, on collections of information. As indicated, in order to implement the Children's Hospital Graduate Medical Education Payment Program (CHGME), certain information is required as set forth in this notice in order to determine eligibility for payment and amount of payment. In accordance with the PRA, we have received final OMB approval on our proposed collection of information (OMB No. 0915–0247).

Collection of information: The Children's Hospitals Graduate Medical Education Payment Program.

Description: Data is collected on the number of full-time equivalent residents in applicant children's hospital training programs to determine the amount of direct and indirect medical education payments to participating children's hospitals. Indirect medical education payments will also be derived from a formula that requires the reporting of case mix index information from participating children's hospitals. Hospitals will be requested to submit such information in an annual application.

Description of Respondents: Children's hospitals operating approved graduate medical residency training programs.

Estimated Annual Reporting: The estimated average annual reporting for this data collection is approximately 150 hours per hospital. The estimated annual burden is as follows:

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
HRSA–99–1					
(Annual)	54	1	54	99.9	5,395
(Reconciliation)	54	1	54	8	432
HRSA–99–2 (IME)	54	1	54	14	756
HRSA–99–4					
(Required GPRA tables)	54	1	54	28	1,512
Total	54	1	54	.....	8,095

National Health Objectives for the Year 2000

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, and its successor, Healthy People 2010. These are Department-led efforts to set priorities for national attention. The CHGME program is related to the priority area 1 (Access to Quality Health Services) in Healthy People 2010, which is available online at *http://www.health.gov/healthypeople.*

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Department education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Depaertment strongly encourages all award recipients to provide a smoke-free workplace and promote abstinence from all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

This program is not subject to the Public Health Systems Reporting Requirements.

Dated: June 7, 2001.

Elizabeth M. Duke,

Acting Administrator.

Dated: July 17, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–18166 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Rural Health Outreach and Rural Health Network Development Program

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy (ORHP) announces that fiscal year 2002 funds may be available for grants under the Rural Health Outreach and Network Development Program.

Two kinds of projects will be funded under this announcement: (1) Rural Health Outreach Grants for the development of networks to expand service delivery systems in rural areas where support is provided for the actual delivery of new services or enhancement of existing services.

(2) Rural Health Network Development Grants for the planning and development of vertically integrated networks in rural areas where the emphasis is placed not on the actual delivery of services, but on efforts to restructure the delivery system in rural communities. Funds are appropriated for these grants under Public Law 104–208. The grants are authorized by section 330A of the Public Health Service Act as amended by the Health Centers Consolidation Act of 1996, Public Law 104–299.

Applicants and Network members may not apply for both the Rural Health Outreach Grant Program and the Rural Health Network Development Grant Program. Except for current and former one-year Network grantees, current and former grantees cannot reapply for either grant program for FY 2002 funding.

National Health Objectives for the Year 2010: The Health Resources & Services Administration (HRSA) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a Public Health Service (PHS) national activity for setting priority areas. The Rural Health Outreach program is related to the priority areas for health promotion, health protection and preventive services. Potential applicants may receive a copy of Healthy People 2010 (Stock No. 017–001–00547–9) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238). The cost for the full document in hard copy is $70.

The document can also be read online in several different formats such as: HTML, Microsoft Word, Adobe Acrobat Reader Portal Document File or Rich Text Format. The document file can be found on the Internet at: *http://www.health.gov/healthypeople/Document/tableofcontents.htm.*

Amount and Duration of Grant Awards: Grant awards under this notice will be limited to a total amount of $200,000 (direct and indirect costs) per grantee, per year.

Applications for smaller amounts are encouraged. Applicants may propose project periods for up to three years, but the duration of projects is contingent upon the availability of funds. It is expected that the average grant award will be approximately $180,000 for the first year. Award date for grants will be May 1, 2002. However, applicants are advised that continued funding of grants beyond the one-year period covered by this announcement is contingent upon the appropriation of funds for the program and assessment of grantee performance. No project will be supported for more than three years.

Application Deadlines: Applications for the programs must be received by the close of business on September 28, 2001 for the Rural Health Outreach Program and October 5, 2001 for the Rural Health Network Development Program. Completed applications must be sent to The HRSA Grants Application Center (GAC), 1815 North Fort Myers Drive, Suite 300, Arlington, VA 22209.

Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants must obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service in lieu of a postmark. Private metered postmarks are not acceptable as proof of timely mailing. Late applications will not be reviewed.

The standard application form and general instructions for completing applications (Form PHS–5161–1, Revised 7/00) have been approved by the Office of Management and Budget. To receive an application kit, contact The HRSA GAC, toll-free at, 1–877/477–2123 or write them at 1815 North Fort Myers Drive, and Suite 300, Arlington, VA 22209. To order an application kit for either program, you must identify the program citing the following program names and CFDA numbers: Rural Health Outreach Program, 93.912A; Rural Health Network Development Program, 93.912B. If you are unable to connect to one of these toll-free numbers please call Lilly Smetana, 301/443–6884, in the Office of Rural Health Policy.

FOR FURTHER INFORMATION CONTACT: Information or technical assistance regarding business, budget, or financial issues should be directed to the Office of Grants Management, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East West Highway, 11th Floor, Bethesda, Maryland 20814, 301/594–4260 as follows:

Staff	Phone	States
Cheryl Armstead	301–594–4261	AK, ID, NH, OR, WA.
Inge Cooper	301–594–4236	CT, KS, WV.
Kathy Cummings	301–594–0823	DE, PA.
Mary Douglas	301–594–4232	FL, KY, NV, NE, Virgin Islands.
Donna Marx	301–594–4245	IA, MN, MO, WI.
Joyce Monk	301–594–4252	NY, Puerto Rico, VT.
Cathy Neher	301–594–4268	MA, ME, NJ.
Carol Odum	301–594–4254	CA.
Tonya Randall	301–594–4259	AZ, DC, OH, TN, RI.
Joyce Sagami	301–594–4253	AR, LA, OK, TX.
Angela Stokes	301–594–4257	MD, NM, VA.
Martha Teague	301–594–4258	AL, NC, SC.
Carolyn Testerman	301–594–4244	IL, MI, IN, Pacific Islands.
Kim Whitfield	301–594–4255	CO, MT, ND, SD, UT, WY.
Anifa Williams	301–594–5242	HI, MS.
Stephanie Young	301–594–1246	GA.

Requests for technical or programmatic information on this announcement should be directed to Lilly Smetana of the Office of Rural Health Policy, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0835.

SUPPLEMENTARY INFORMATION: The two categories of grants offered under this program are the Rural Health Outreach Grants and Rural Health Network Development Grants. These programs have the common purposes ''* * *to coordinate, restrain the cost of, and improve the quality of essential health care services, including preventive and emergency services, through the development of integrated health care delivery systems or networks in rural areas and regions.'' The two types of grants available through this announcement are different approaches to achieve the same goals.

Rural Health Outreach Grants

These grants will support the development of health service delivery systems in rural areas that lack basic services. Grants will be awarded to support the actual delivery of new services through networks comprised of at least three separately owned organizations. They may also be awarded to support activities that will expand access to or increase utilization of existing services. Programs in health prevention, health education, quality improvement, emergency care and other services may be supported through the program. Applicants may propose projects to address the needs of a wide range of rural population groups including the poor, the elderly, adolescents, rural minority populations, pregnant women and children, populations with special health care needs, etc. Projects should be responsive to the special cultural and linguistic needs of specific populations. The grants may not be used to support planning activities.

A central goal of the Rural Outreach Grants is to better coordinate services through the development of new service delivery systems. In furtherance of this goal, participation in the program requires the formation of a service delivery network of three or more health care organizations, or a combination of three or more health care and social service organizations. At least one of the entities must be a health care service delivery organization. Individual members of the Rural Outreach Grant network might include such entities as physicians, hospitals, public health agencies, emergency care providers, mental health centers, Faith-based services, Rural Health Clinics, social service agencies, health professions schools, other educational institutions, community and migrant health centers, civic organizations, dental providers, etc. There must be a memorandum of agreement or other arrangements to ensure effective collaboration among members of the service delivery network. Although applicants for the program must be nonprofit or public entities, other network members may be for-profit organizations.

The roles and responsibilities of each member of a Rural Outreach Grant network must be clearly defined and each must contribute significantly to the goals of the project. The local community must be involved in the project and committed to the goals of the network.

Applicants are encouraged to develop projects to address specific areas of need in their communities. Need should be established through a formal needs assessments, comparison of local data against State and national information and/or by population specific demographic data.

The following are *examples* of project areas that can be supported through this program:

(1) Projects that bring ambulatory and mental health care to unserved or underserved rural areas or populations. The HRSA has a special priority to establish primary care programs along the U.S./Mexican border.

(2) Projects that provide, or make possible the provision, of emergency medical services within rural areas that lack these services.

(3) The creation of new integrated networks of providers to deliver ambulatory care when such networks appear likely to improve access to health care or its quality.

(4) Projects that provide services that enable rural populations to better utilize existing health services, including those involving the use of community outreach workers.

(5) Projects that provide training for health care professionals and workers, including community outreach workers, when such training may be demonstrated to be likely to lead to higher quality services or more accessible services in rural areas.

(6) Projects that enhance the health and safety of farmers, farm families, and migrant and seasonal farm workers through direct services.

(7) Projects that address the needs of rural minority populations.

(8) Projects that train rural people in disease prevention and health promotion, when such training addresses critical needs of the area.

(9) Projects on adolescent health and on school-based programs.

(10) Projects from Faith based organizations that provide health services to members of the community.

The focus areas listed above are examples only. All projects must address the demonstrated needs of the community.

Review Considerations

Applications for the Rural Health Outreach Grant Program will be evaluated on the basis of the following criteria:

Criterion and Maximum Points

(1) Need for the Project and the Network (25 Points)

A. Description of Need (15 points)
1. Unmet Health Needs of the Target Population
2. Access Barriers to Needed Services
3. Description and Map of the Service Area
4. Relevant Services Available in or Near the Service Area

B. Description of Network Capability (10 Points)
1. Applicant Management Information
2. Management Review Form
3. Identification and Credentials of Network Members
4. History of Network Development and Collaborative Activities
5. Letters of Commitment from Network Members

(2) Description of the Program to Meet the Needs (25 Points)

A. Description of the Planning Process (10 Points)
1. Role of the Network in Planning
2. Role of the Community in Planning
3. Models that Work

B. Project Plan (15 Points)
1. Goals, Strategies, Activities, Responsible Agents and Completion Milestones

(3) Project Management and Network and Community Involvement (25 Points)

A. Responsibilities of the Applicant and Network Members(10 Points)
1. Plans for Network Governance
2. Plans for Network Communication and Coordination
3. Description and Chart of Organization and Lines of Authority

B. Community Support and Involvement in Project (10 Points)
1. Financial (including documentation)
2. In-Kind (including documentation)
3. Letters from Community Leaders

(4) Budget (10 Points)

A. Budget Information (5 Points)

1. Instructions for filling out Standard Form 424A

B. Budget Justification Narrative (5 Points)

(5) Personnel

A. Biographical Sketches (2 Points)
B. Position Descriptions (3 Points)

(6) Evaluation Plan and Dissemination Strategies

A. Strategy for Measuring Progress and Results (8 Points)
1. Measuring and Utilizing Progress and Results.

B. Strategies for Disseminating Information About the Project (2 Points)
1. Identify strategies to publicize your project to the community.
2. Identify strategies to educate appropriate State and national organizations about your project.
3. Potential of Project to be Replicated in Other Communities

(7) Sustainability Plan

Strategies for Continuing the Program after Grant Support Ends

Note to current and former Rural Health Outreach Grantees: Current and former Rural Health Outreach Grantees may not apply for FY 2002 funds regardless of the type of proposed project or services to be delivered.

Rural Health Network Development Grants

These grants will support the development of integrated health care networks in rural areas or regions of the country as mechanisms for strengthening rural health care delivery systems. The grants will support network activities that demonstrate intent to move from shared and collaborative activities to integration of functions across network members. Networks may be vertically integrated, meaning they consist of different types of providers (e.g., hospital, health department, rural health clinic, community health center) or horizontally integrated networks meaning they are composed of only one type of provider (e.g., hospitals only). These integrated networks entail more formal relationships among the members than the networks envisioned for the Rural Outreach Grants. Also, the activities supported by these grants do not involve the actual delivery of services. Instead, it is expected that these activities will be aimed at moving the networks from sharing and collaborating to integrating functions across members. This integration of functions decreases fragmentation of service delivery across members and achieves certain efficiencies and economies of scale among them. Together, these outcomes help strengthen the network members and the rural health care system as a whole.

Like the outreach networks, rural health networks supported under these grants must be composed of three or more health care providers or other entities that provide or support the delivery of health care services. At least three of the network members must be separately owned. While social service providers may be part of a network, the grants will not support networks for the exclusive provision of social services. The members of a network must have a strong existing commitment to the network's goals and objectives and some history of prior collaboration and accomplishment before applying for the grant. Unlike the Rural Outreach Grants, the program will not support projects where the members have never collaborated in the past.

Although applicants for the program must be nonprofit or public entities, profit-making organizations may be members of a network. The network must address how its work benefits the local community served by the network members.

Review Considerations

Applications for the Rural Network Development Grant Program will be evaluated on the basis of the following criteria:

Criterion and Maximum Points

(1) Statement of Need and Appropriateness of Funding (15 Points)

A. The applicant demonstrates the need for Federal funding to support network activities by describing the environment in which the network has developed and the appropriateness of applying for Federal funding at this point. The applicant utilizes appropriate data sources in their analysis of the environment in which the network is functioning.

B. The applicant identifies the network members and explains why these are the appropriate collaborators and why other key groups are not included.

C. The applicant describes the value of the network to its members and how the network will provide value to the community.

(2) Evidence of Prior Collaborative History and Readiness for Integration Funding (25 Points)

A. The applicant describes prior collaborative history and accomplishments among a majority of network members.

B. The applicant provides a Memorandum of Agreement, bylaws, letter of incorporation etc. that demonstrates commitment on the part of all network members.

C. The applicant describes the level of commitment of network members including allocation of time, personnel, cash, and other in-kind contributions.

D. The applicant provides a map that shows the location of network members, the geographic area that will be served by the network and any other information that will help reviewers visualize and understand the scope of the proposed project. The applicant includes an organizational chart for the network showing each member of the network and the relationships between members. The applicant fills out and includes the Management Review Form provided in the application packet.

E. The applicant has an interim network leader in place and describes any known candidates for the permanent network leader position. The applicant provides a position description for the network leader job that outlines desirable skills and qualities. Position descriptions are provided for other key staff positions to be filled. Short biographical sketches that suggest the qualifications necessary to perform assigned work are provided for already hired key network staff.

F. The applicant describes a governance structure for the network that has effective, independent governing bodies and leadership. Providers of care and lay consumers of care are represented on the Board.

(3) Statement of Project and Budget (35 Points)

A. The applicant describes specific goals, objectives, activities, and expected outputs and outcomes that align with the intent of the Network Development Grant Program.

B. The applicant provides a matrix that carefully integrates goals, objectives, activities, output and outcome measures, and anticipated outputs and outcomes. The matrix outlines the individual responsible for carrying out each activity and includes a timeline for all three years of the project.

C. The applicant provides an accompanying narrative that describes the overall project, the marketing strategy, the management strategy, the financial management strategy, and addresses sustainability.

D. The applicant discusses how this application relates to other community and State-level grant applications and awards like the Community Access Program, the Robert Wood Johnson

Foundation's Networking for Rural Health Program, and the Medicare Rural Hospital Flexibility Program.

E. The applicant provides required budget forms, a budget worksheet, and budget narrative that are appropriate and adequate to accomplish the goals, objectives, activities, and expected outputs and outcomes as described in the matrix and project narrative. The budget is reasonable and allocates Federal funds for allowable purposes. All network members contribute to each year of the budget and their joint contributions total at least 20 percent of the budget for each grant year.

(4) Evaluation (10 points)

A. The applicant proposes appropriate output and outcome measures for the goals, objectives, and activities described in the project matrix and narrative.

B. The applicant explains any assumptions made in developing the project matrix and outlines anticipated outputs and outcomes.

C. The applicant describes the process by which data for these measures will be collected and analyzed.

D. The applicant describes a continuous self-evaluation plan that will measure, monitor, and improve the network's execution to ensure progress toward identified goals and objectives.

E. The applicant describes an approach for evaluating the network's progress against its proposed outputs and outcomes following the three-year grant period.

(5) Sustainability (15 Points)

A. The authorizing language for this program requires that grants awarded shall be used ''for the * * * development of integrated, self-sustaining health care networks.'' In response, the applicant includes a plan for sustainability in the business plan provided under the ''Statement of Project and Budget'' Section.

B. The applicant's sustainability plan includes a discussion of methods for future income generation like member dues, maximizing reimbursement opportunities, recruiting new members, producing and marketing new products to members and others, and pursuing further grant opportunities.

Note to current and former Rural Health Network Development Grantees: Other than current or former one-year Network Development Grantees, current and former grantees may not reapply for grant funds. Current and former one-year grantees may apply for up to two additional years of funding.

Eligibility Requirements

The primary grant recipient, which is an organization that is or represents a network of three or more separately owned organizations, must be a public or nonprofit private entity that meets one of the three requirements stated below.

(1) The applicant organization must be located in a rural area or in a rural zip code of an urban county (list included in the application materials) and all services must be provided in a rural county. If the applicant is owned by or affiliated with an urban entity or health system the rural component may still apply as long as the rural entity can directly receive and administer the grant funds in the rural area. The rural entity must be in complete control of the planning, program management and financial management of the project. The urban parent organization must assure the Federal Office of Rural Health Policy in writing that, for this project, they will exert no control over or demand collaboration with the rural entity. The urban parent may, at the request of the rural entity, assist with direct service delivery or provide health care personnel who would not otherwise be available. Other network members may be urban entities.

(2) The applicant organization exists exclusively to provide services to migrant and seasonal farmworkers in rural areas and is supported under Section 330(g) of the Public Health Service Act. These organizations are eligible regardless of the urban or rural location of the administrative headquarters.

(3) The applicant is a Native American Tribal or quasi-Tribal entity for services delivered on reservation or Federally recognized Tribal lands.

Note To Former Applicants: The list of rural areas by State and county has been updated and is included in the application packet.

In addition to the above criteria, applicants must be capable of receiving the grant funds directly and must have the capability to manage the project. Project Management means that applicants must be able to exercise administrative and program direction over the grant project; must be responsible for hiring and managing the project staff; must have the administrative and accounting capabilities to manage the grant funds; and must have some permanent staff at the time the application is submitted. Further, applicants must have an Employer Identification Number from the Internal Revenue Service and other proof of organizational viability that may be requested by the Grants Management Office.

Applicants from the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of the Virgin Islands, Guam, American Samoa, the Compact of Free Association Jurisdiction of the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia are eligible to apply.

Applications that do not meet the requirements stated above will not be Reviewed.

Preference Points

Approved applications for both programs that are awarded a funding preference will be placed in a more competitive position in ranking all applications that fall within the funding range. The funding range is the threshold score that determines the cutoff point for funding in a given fiscal year determined by available funds. Applications that do not address funding preferences will be given full and equitable consideration during the review process but will not be funded until all the applications that do receive the preference and fall within the funding line are funded.

To receive a preference, applicants *must request* a preference and identify the type of preference they are eligible for in the application. Approved applications that fall within the funding range and that are awarded a funding preference will be considered for funding before applications with no funding preference requested or identified.

As provided in the law, a preference will be awarded to any qualified applicant that demonstrates substantial inclusion of any one of the following in the proposed project:

(1) A majority of the healthcare providers serving in the area or region to be served by the network. The applicant must document the number of health care providers in the service area or region and the percentage of those providers that will be involved in the project. Data or documents to authenticate the claim must be included in the application;

(2) Any federally qualified health centers, rural health clinics, and local public health departments serving in the area or region. (The applicant must demonstrate the involvement of one or more of these health care facilities operating in the area or region to be served by the project. The involvement must be more than a referral relationship. The entity must be a full

and active member of the network, and the letter of commitment must demonstrate the organizations' roles, responsibilities, and contribution of resources to the project.);

(3) Outpatient mental health providers serving in the area or region. (This guideline mirrors the previous guideline and the applicant must demonstrate the same level of participation for the mental health providers serving in the area or region.); or

(4) Appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants, and children program, to improve access to and coordination of health care services. This guideline also mirrors the previous guideline. As above, the applicant must demonstrate the same level of participation for the social service providers and related health agencies. These organizations must be intimately connected to the purpose of the grant program. The applicant must demonstrate how the inclusion of any of these entities will improve access to and coordination of health care services.)

Geographic Considerations

The HRSA hopes to achieve a geographic balance in making new awards under this announcement. Therefore, HRSA will consider geographic coverage when deciding which approved applications to fund.

Other Information

Applicants for both types of grants must demonstrate that at least 50 percent of the funds awarded will be spent in rural areas or for the benefit of rural communities. Grant funds may not be used for purchase, construction or renovation of real property. The grants will not support projects that are solely for the purchase of equipment or vehicles.

Applicants should demonstrate participation in the cost of grant supported projects. Cost participation may be in cash or in-kind. In-kind contributions might include donated staff time, donated space or equipment, donated vehicles, or other non-cash resources.

Applicants are advised that the entire application may not exceed 70 pages in length including the project and budget narratives, face page, all forms, appendices, attachments and letters of support. Each page of the application must be numbered consecutively. All applications must be computer generated or typewritten in print measuring at least 12 characters (in scalable or regular font) per inch and legible. Margins must be no less than 1 inch on the top and 1/2 inch on the bottom and left and right sides.

In order to allow the Office of Rural Health Policy to plan for the objective review process, applicants are encouraged to notify the Office in writing of their intent to apply and the program they are applying for. This notification serves to inform the Office of anticipated numbers of applications, which may be submitted. The address is Lilly Smetana, Office of Rural Health Policy, Health Resources and Services Administration, Parklawn Building, Room 9A–55, Rockville, Md., 20857, or Fax# 301/443–2803. If notification is offered, it should be received no later that September 21, 2001.

Technical Assistance Workshops

Four (4) Technical Assistance sessions for prospective applicants for the Rural Health Outreach and Rural Health Network Development programs will be held in late July and early August.

The sessions will be held as follows:

July 23, 2001—Minneapolis, MN
July 25, 2001—Las Vegas, NV
July 31, 2001—Jackson, MS
August 2, 2001—Pittsburgh, PA

Two technical assistance conference calls will also be held in August. Verification for the dates and places of the Technical Assistance workshops and calls will appear in the application documents and on our web site—*www.ruralhealth.hrsa.gov.*

Smoke-Free Workplaces

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements. The Office of Management and Budget—# 0937–0195, has approved reporting requirements. Under these requirements, the community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424)

b. An abstract of the project not to exceed one page, which provides:

(1) A description of the population to be served

(2) A summary of the services to be provided

(3) A description of the coordination planned with the appropriate State or local health agencies.

Executive Order 12372

This grant program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate State and local officials as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which will be included in the application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. All SPOC recommendations should be submitted to Lawrence R. Poole, Director, Office of Grants Management, Bureau of Primary Health Care, 4350 East West Highway, 11th Floor, Bethesda, Maryland 20814, (301) 594–4235. The due date for State process recommendations is 60 days after the application deadline of September 28, 2001 for competing applications for the Outreach Program and October 5, 2001 for the Network Program. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date. (See Part 148 of the PHS Grants Administration Manual, Intergovernmental Review of PHS Programs under Executive Order 12372, and 45 CFR Part 100 for a description of the review process and requirements.

Paperwork Reduction Act

If the methods proposed for the project evaluation should fall under the purview of the Paperwork Reduction Act of 1995, OMB approval will be sought for proposed data collection activities.

State Offices of Rural Health

Applicants are *required* to notify their State Office of Rural Health (or other appropriate State entity) of their intent to apply for this grant program and to consult with such agency regarding the content of the application. The State Office can provide information and technical assistance. A list of State Offices of Rural Health is included with the application kit.

OMB Catalog of Federal Domestic Assistance Number is: 93.912 A for the Rural Health Outreach Program; 93.912 B for the Rural Health Network Development Program.

Dated: July 17, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–18181 Filed 7–19–01; 8:45 am]

BILLING CODE 4165–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Refugee Resettlement Program; Availability of Formula Allocation Funding for FY 2001 Targeted Assistance Grants for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of availability of formula allocation funding for FY 2001 targeted assistance grants to States for services to refugees in local areas of high need.

SUMMARY: This notice announces the availability of funds and award procedures for FY 2001 targeted assistance grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of public assistance, and where specific needs exist for supplementation of currently available resources.

This notice continues the eligibility of those 50 counties located in 29 States that previously qualified for and received targeted assistance program (TAP) grants beginning in FY 1999 as a result of the three-year qualification process. The FY 2001 TAP formula allocations are based on the same formula as in FY 1999, updated to reflect arrivals during the five-year period from FY 1996 through FY 2000. The final notice reflects an adjustment in final allocations to States as a result of additional arrival data.

DATES: The closing date for submission of applications is August 20, 2001. See Part VIII of this notice for more information on submitting applications. Applications postmarked after the closing date will be classified as late.

ANNOUNCEMENT AVAILABILITY: This notice is published on the ORR website at: *www.acf.dhhs.gov/programs/orr*

FOR FURTHER INFORMATION CONTACT: Gayle Smith, Director, Division of Refugee Self-Sufficiency, (202) 205–3590; email:gsmith@acf.dhhs.gov.

SUPPLEMENTARY INFORMATION: A notice of proposed allocations to States of FY 2001 funds for targeted assistance was published in the **Federal Register** on April 27, 2001 (66 FR 21229).

I. Purpose and Scope

This notice announces the availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The Office of Refugee Resettlement (ORR) has available $49,477,000 in FY 2001 funds for the targeted assistance program (TAP) as part of the FY 2001 appropriation for the Department of Health and Human Services (Consolidated Appropriations Act, 2001, as enacted into law by section 1(a)(1) of Pub. L. No. 106–554).

The Director of the Office of Refugee Resettlement (ORR) will use the $49,477,000 in targeted assistance funds as follows:

$44,529,300 will be allocated to States under the five-year population formula, as set forth in this notice.

$4,947,700 (10 percent of the total) will be used to award discretionary grants to States under separate continuation grant awards.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), which provides that targeted assistance grants shall be made available ''(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity.''

II. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. No. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513).

III. Use of Funds

Targeted assistance funding must be used to assist refugee families to achieve economic independence in accordance with regulations at 45 CFR Part 400. The term ''refugee'' includes persons who meet all requirements of 45 CFR 400.43 (as amended by 65 FR 15409 (March 22, 2000)) and 45 CFR 401.2 (Cuban and Haitian entrants). In addition to the statutory requirement that TAP funds be used ''primarily for the purpose of facilitating refugee employment'' (section 412(c)(2)(B)(i)), funds awarded under this program are intended to help fulfill the Congressional intent that ''employable refugees should be placed on jobs as soon as possible after their arrival in the United States'' (section 412(a)(1)(B)(i) of the INA). Therefore, in accordance with 45 CFR 400.313, targeted assistance funds must be used primarily for employability services designed to enable refugees to obtain

jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Under 45 CFR 400.316, a State may provide the same scope of services under targeted assistance as may be provided to refugees under 45 CFR 400.154 and 45 CFR 400.155, with the exception of 45 CFR 400.155(h). Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

States may not provide services funded under this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (five years). Specifically, States may not provide citizenship preparation services to refugees who have been in the United States for more than 60 months (five years) using targeted assistance funds.

In accordance with 45 CFR 400.314, States are required to provide targeted assistance services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) Refugees who are cash assistance recipients, particularly long-term recipients; (b) unemployed refugees who are not receiving cash assistance; and (c) employed refugees in need of services to retain employment or to attain economic independence.

In accordance with 45 CFR 400.317, if targeted assistance funds are used for the provision of English language training, such training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

Refugees who are participating in TAP-funded or social services-funded employment services or have accepted employment are eligible for child care services. For an employed refugee, TAP-funded child care should be limited to one year after the refugee becomes employed. States and counties, however, are expected to use child care funding from other publicly funded mainstream programs as a prior resource and are encouraged to work with service providers to assure maximum access to other publicly funded resources for child care.

Reflecting section 412(a)(1)(A)(iv) of the INA, States must ''ensure that women have the same opportunities as men to participate in training and instruction.'' In addition, in accordance with 45 CFR 400.317, targeted assistance services must be provided, to the maximum extent feasible, in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women.

In accordance with 45 CFR 400.317, targeted assistance services must be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background, to the maximum extent feasible. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. Services funded under this notice must be refugee-specific services that are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job-skills training, on-the-job training, or English language training, however, need not be refugee-specific.

Finally, in order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR strongly encourages States and counties to promote and give special consideration to the provision of services through coalitions of refugee service organizations, such as coalitions of Mutual Assistance Associations (MAAs), voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

The award of funds to States under this notice will be contingent upon the completeness of a State's application as described in section VIII below.

IV. Discussion of Comments Received

ORR did not receive any comments in response to the notice of proposed FY 2001 allocations to States for targeted assistance.

V. Eligible Grantees

Eligible grantees are those agencies of State governments that are responsible for the refugee program under 45 CFR 400.5 in States containing counties that qualify for FY 2001 targeted assistance awards. Replacement designees must also adhere to the regulations at Subpart L of 45 CFR part 400 regarding formula allocation grants for targeted assistance, if the State authorized the replacement designee appointed by the Director to act as its agent in applying for and receiving targeted assistance funds. If a State withdraws from all or part of the program components with the prior approval of the Director and a Wilson/Fish alternative program (section 412(e)(7) of the Immigration and Nationality Act) is approved to provide the program components relinquished by the State, the Wilson/Fish grantee may apply for and receive targeted assistance in lieu of the State.

The Director of ORR determined the eligibility of counties for inclusion in the FY 2001 targeted assistance program on the basis of the method described in section VI of this notice.

The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States that have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments that are qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State. However, if a State chooses to determine county allocations differently from those set forth in the final notice, in accordance with 45 CFR 400.319, the FY 2001 allocations proposed by the State must be based on the State's population of refugees who arrived in the U.S. during the most recent five-year period. A State may use welfare data as an additional factor in the allocation of its targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. In addition, if a State chooses to allocate its FY 2001 targeted assistance funds in a manner different from the formula set forth in this final notice, the FY 2001 allocations and methodology proposed by the State must be included in the State's application for ORR review and approval.

Applications submitted in response to this final notice are not subject to

review by State and area-wide clearinghouses under Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

VI. Qualification and Allocation

A. Qualification

The Director of ORR will determine the qualification of counties for targeted assistance once every three years, as stated in the FY 1999 notice of proposed availability of targeted assistance allocations to States which was published in the **Federal Register** on March 10, 1999 (64 FR 11927). Since ORR determined the qualification of counties for targeted assistance in FY 1999, those qualifying counties determined eligible in FY 1999 and listed in this notice as qualified to apply for FY 2001 TAP funding will remain qualified for TAP funding through FY 2001 on the basis of the most current five-year refugee/entrant arrival data. ORR does not plan to consider the eligibility of additional counties for TAP funding until FY 2002, when ORR will again review data on all counties that could potentially qualify for TAP funds.

B. Allocation Formula

Of the funds available for FY 2001 for targeted assistance, $44,529,300 will be allocated by formula to States for qualified counties based on the initial placements of refugees, Amerasians, entrants (including Havana parolees), and Kurdish asylees in these counties during the five-year period from FY 1996 through FY 2000 (October 1, 1995–September 30, 2000). These data are available in the ORR Refugee Data System.

The arrival data used as the basis for targeted assistance formula allocations do not take asylees or secondary migrants who have received services into account. We are unable to include secondary migrants in the 5-year population because secondary migration is not currently tracked at the county level. We are unable to include asylees, except for Kurdish asylees who were processed on Guam, because information from the Immigration and Naturalization Service (INS) and the Executive Office of Immigration Review (EOIR) on grants of asylum are available by zip code of the asylee. Unfortunately, zip code assignments do not correspond to county designations. Many zip codes cross county lines and in some cases, State lines. Therefore, based on available data, ORR is currently unable to credit numbers of asylees to counties.

ORR plans to remedy this by revising the ORR–11 and seeking OMB approval to capture numbers of asylees and secondary migrants accessing services at the county level. This revision to the ORR–11 will allow States to report on numbers of asylees and secondary migrants receiving services at the county level. ORR will adjust the targeted assistance 5-year population based on these data.

States are advised that ORR expects that these revisions to the ORR–11, once implemented, will require States to track asylees and secondary migrants who receive services by name, social security number, alien registration number, county of initial residence/resettlement, and county of current residence in order to transmit this information to ORR in the future.

With regard to Havana parolees, in the absence of reliable data on the State-by-State resettlement of this population, we are crediting 49,507 Havana parolees who arrived in the U.S. during the past 5 years according to the Immigration and Naturalization Service (INS) using the following methodology. For FY 1999 and FY 2000, we credited the qualifying counties with Havana parolees according to arrival numbers supplied to us by the Parolee Orientation Program funded by the International Affairs Office of the INS. For FY 1996 through 1998, the Havana parolees for each qualifying county in Florida are based on actual arrival data submitted by the State of Florida; Havana parolees credited to qualifying counties in other States were prorated based on the counties' proportion of the three-year (FY 1996 through FY 1998) entrant population in the U.S.

VII. Allocations

Table 1 lists the qualifying counties; the number of refugee (column 3) and entrant (column 4) arrivals in those counties during the five-year period from October 1, 1994—September 30, 1999; the number of Havana parolees (column 5) credited to each county during this period, the total number of arrivals; and the final amount of each county's allocation based on its five-year arrival population.

Note 1.: —Table 1. Final Targeted Assistance Allocations By County: FY 2001 is attached. Table 2.—State totals for final FY 2001 targeted assistance allocations is attached.

VIII. Application and Implementation Process

States that are currently operating under approved management plans for their FY 1999 targeted assistance program and wish to continue to do so for their FY 2001 grants may provide the following in lieu of resubmitting the full currently approved plan:

The State's application for FY 2001 funding shall provide:

- Assurance that the State's current management plan for the administration of the targeted assistance program, as approved by ORR in FY 1999, will continue to be in full force and effect for the FY 2001 targeted assistance program, subject to any additional assurances or revisions required by this notice which are not reflected in the current plan. Any proposed modifications to the approved plan will be identified in the application and are subject to ORR review and approval, e.g., if the State assumes local administration of the program or if the State chooses to determine county allocations differently. Any proposed changes must address and reference all appropriate portions of the FY 1999 application content requirements to ensure complete incorporation in the State's management plan.
- A line item budget and justification for State administrative costs limited to a maximum of five percent of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project.
- Targeted assistance performance goals as described under Section IX.

IX. Results or Benefits Expected

The applicant describes in quantifiable terms the results and benefits to be derived. For example, all applicants must establish targeted assistance proposed performance goals for each of the six ORR performance outcome measures for each targeted assistance county's proposed service contract(s) or sub-grants for the next contracting cycle. Proposed performance goals must be included in the application for each performance measure. The six ORR performance measures are: entered employments, cash assistance reductions due to employment, cash assistance terminations due to employment, 90-day employment retentions, average wage at placement, and job placements with available health benefits. Targeted assistance program activity and progress achieved toward meeting performance outcome goals are to be reported quarterly on the ORR–6, the ''Quarterly Performance Report.''

X. Reporting Requirements

States will be required to submit quarterly reports on the outcomes of the targeted assistance program, using the same format that States use for reporting on refugee social services formula grants: Schedule A and Schedule C, pages 1 and 2 of the ORR–6 Quarterly

Performance Report form (OMB #0970–0036). States are also required to file the Financial Status Report (SF–269) semi-annually.

XI. The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The following information collections are included in this notice of final allocations: OMB Control No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD) which expires 12/31/2003, and OMB Control No. 0970–0036, ORR Quarterly Performance Report (QPR) which expires 7/31/02. 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.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.584

Dated: July 13, 2001.

Carmel Clay-Thompson,

Acting Director, Office of Refugee Resettlement.

TABLE 1.—FINAL TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 2001

County	State	Refugees [1]	Entrants	Havana parolees [2]	Total arrivals FY 1996—2000	Total FY 2001 final allocation
1 Maricopa County	Arizona	9,674	685	401	10,760	$1,407.140
2 Fresono County	California	968	2	1	971	126,982
3 Los Angeles County	California	13,149	124	380	13,653	1,785,447
4 Orange County	California	4,713	12	23	4,748	620,874
5 Sacramento County	California	10,652	2	6	10,660	1,394,032
6 San Diego County	California	5,826	141	280	6,247	816,885
7 San Francisco	California	5,028	13	33	5,074	663,479
8 Santa Clara County	California	6,317	43	31	6,391	835,776
9 Yolo County	California	1,224	0	3	1,227	160,399
10 Denver County	Colorado	2,795	0	5	2,800	366,100
11 District of Columbia	District of Columbia	2,941	5	14	2,960	387,106
12 Broward County	Florida	617	1,285	1,274	3,176	415,331
13 Dade County	Florida	7,012	14,460	40,333	61,805	8,082,345
14 Duval County	Florida	4,641	18	59	4,718	616,981
15 Hillsborough County	Florida	1,605	329	1,312	3,246	424,485
16 DeKalb County	Georgia	8,685	10	8	8,703	1,138,061
17 Fulton County	Georgia	4,644	84	134	4,862	635,810
18 Cook/Kane	Illinois	14,730	182	272	15,184	1,985,637
19 Polk County	Iowa	3,571	1	2	3,574	467,378
20 Jefferson County [3]	Kentucky	3,765	1,576	487	5,828	762,152
21 Hampden Coutny	Massachusetts	2,295	9	5	2,309	301,900
22 Suffolk County	Massachusetts	4,154	57	49	4,260	557,120
23 Ingham County	Michigan	1,911	718	227	2,856	373,515
24 Kent County	Michigan	3,125	190	29	3,344	437,299
25 Hennepin County	Minnesota	7,891	5	4	7,900	1,033,036
26 Ramsey County	Minnesota	1,680	2	5	1,687	220,627
27 City of St. Louis	Missouri	9,429	1	1	9,431	1,233,244
28 Lancaster County	Nebraska	2,302	34	20	2,356	308,098
29 Clark County [4]	Nevada	1,761	1,163	698	3,622	473,655
30 Hudson County	New Jersey	787	257	868	1,912	250,035
31 Bernalilo County	New Mexico	880	695	647	2,222	290,575
32 Monroe County	New York	2,526	643	358	3,527	461,232
33 New York	New York	32,361	355	481	33,197	4,341,227
34 Oneida County	New York	4,781	0	0	4,781	625,219
35 Guilford County	North Carolina	2,508	5	15	2,528	330,591
36 Cass County	North Dakota	2,043	0	2	2,045	267,428
37 Cuyahoga County	Ohio	3,335	6	7	3,348	437,833
38 Mulnomah	Oregon	11,076	734	317	12,127	1,585,841
39 Erie County	Pennsylvania	1,989	0	0	1,989	260,105
40 Philadelphia County	Pennsylvania	4,200	26	39	4,265	557,691
41 Minnehaha County [5]	South Dakota	1,729	0	0	1,729	226,104
42 Davidson County	Tennessee	3,180	54	45	3,279	428,754
43 Dallas/Tarrant	Texas	10,636	333	406	11,375	1,487,516
44 Harris County	Texas	8,039	508	118	8,665	1,133,104
45 Davis/Salt Lake	Utah	5,569	1	3	5,573	728,727
46 Fairfax County	Virginia	3,285	4	9	3,298	431,297
48 City of Richmond	Virginia	2,403	39	59	2,501	327,100
8 King/Snohomish	Washington	12,529	41	34	12,604	1,648,260
49 Pierce County	Washington	1,982	3	5	1,990	260,251
50 Spokane County	Washington	3,207	0	1	3,208	419,516
Total		266,150	24,855	49,507	340,512	44,529,300

[1] Includes refugees, Amerasian immigrants from Vietnam, and Kurdish asylees from Iraq. Does not include other asylees or secondary migrants.

[2] For FY 1999 and FY 2000, the Havana parolees for all counties are based on actual data. Fro previous years, the Havana parolees of Florida counties are based on actual data, while parolees from other counties are prorated based on each county's proportion of the three-year (FY 1996–1998) entrant population.

[3] The allocation for Jefferson County, Kentucky will be awarded to the Kentucky Wilson/Fish project.
[4] The allocation for Clark County, Nevada will be awarded to the Nevada Wilson/Fish project.
[5] The allocation for Minnehaha County, South Dakota will be awarded to the South Dakota Wilson/Fish project.

TABLE 2.—FINAL TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 2001

State	Total FY 2001 allocation
Arizona	$1,407,140
California	6,403,874
Colorado	366,100
District of Columbia	387,106
Florida	9,539,142
Georgia	1,773,871
Illinois	1,985,637
Iowa	467,378
Kentucky	762,152
Massachusetts	859,020
Michigan	810,814
Minnesota	1,253,663
Missouri	1,233,244
Nebraska	308,098
Nevada	473,655
New Jersey	250,035
New Mexico	290,575
New York	5,427,678
North Carolina	330,591
North Dakota	267,428
Ohio	437,833
Oregon	1,585,841
Pennsylvania	817,796
South Dakota	226,104
Tennessee	428,754
Texas	2,620,620
Utah	728,727
Virginia	758,397
Washington	2,328,027
Total	44,529,300

[FR Doc. 01–18142 Filed 7–19–01; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–29]

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.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs,or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: DOT: Mr. Rugene Spruill, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: July 12, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Suitable/Available Properties

Land (by State)

Alaska

05.5 acres

Harding Lake Recreation Site, Richardson Highway
Salcha Co: AK 99714–
landholding Agency: GSA
Property Number: 54200130001
Status: Underutilized
Comment: No utilities, zoned for outdoor recreation
GSA Number: 9–D–AK–761
Summary of Suitable/Available Properties
Total number of Properties = 1

Unsuitable Properties

Buildings (by State)

Alabama

Federal Building
999 West Main Street
Centre Co: Cherokee AL 35960–
Landholding Agency: GSA
Property Number: 54200130003
Status: Excess
Reason: Within airport runway clear zone
GSA Number: 4–G–AL–770

California

Bldg. 36
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130001
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 60, 61, 64, 65
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130002
Status: Unutilized
Reason: Extensive deterioration
Bldg. 171
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130003
Status: Unutilized
Reason: Extensive deterioration
Bldg. 278
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130004
Status: Unutilized
Reason: Extensive deterioration
Bldg. 351
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130005
Status Unutilized
Reason: Extensive deterioration
Bldg. 130
Naval Station
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200130006
Status: Excess
Reason: Extensive deterioration
Bldg. 415
Naval Station
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200130007
Status: Excess
Reason: Extensive deterioration
Structure 20104
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200130008
Status: Excess
Reason: Extensive deterioration
Structure 31424
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200130009
Status: Excess
Reason: Extensive deterioration
Structure 31592
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200130010
Status: Excess
Reason: Extensive deterioration
Facility 26
Naval Weapons Station
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77200130011
Status: Unutilized
Reason: Secured Area
Bldg. 114
Naval Air Facility
El Centro Co: Imperial CA 92243–
Landholding Agency: Navy
Property Number: 77200130016
Status: Unutilized
Reason: Extensive deterioration
Bldg. 375
Naval Air Facility
El Centro Co: Imperial CA 92243–
Landholding Agency: Navy
Property Number: 77200130017
Status: Unutilized
Reason: Extensive deterioration
Bldg. 376
Naval Air Facility
El Centro Co: Imperial CA 92243–
Landholding Agency: Navy
Property Number: 77200130018
Status: Unutilized
Reason: Extensive deterioration

District of Columbia

Bldg. A–065
Naval District—Anacostia
Washington Co: DC 20374–
Landholding Agency: Navy
Property Number: 77200130019
Status: Unutilized
Reason: Extensive deterioration

Florida

Bldg. 172
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200130012
Status: Unutilized
Reason: Extensive deterioration

Maryland

Bldg. 105
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200130020
Status: Excess
Reason: Extensive deterioration
Bldg. 117A
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200130021
Status: Excess
Reason: Extensive deterioration
Bldg. 117
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200130022
Status: Excess
Reason: Extensive deterioration
Bldg. 405
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200130023
Status: Excess
Reason: Extensive deterioration
Bldg. 454
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200130024
Status: Excess
Reason: Extensive deterioration

Michigan

Station/boathouse Bldg
USCG Harbor Beach Station
Harbor Beach Co: Huron MI 48441–
Landholding Agency: DOT
Property Number: 87200130001
Status: Unutilized
Reason: Floodway, Extensive deterioration

New Jersey

Nike Battery Site 41/43
Lot 17 Williamstown Chews Landing Road
Gloucester Co: Camden NJ
Location: Village of Sicklerville
Landholding Agency: GSA
Property Number: 54200130002
Status: Excess
Reason: Extensive deterioration
GSA Number: 1–GR–NJ–0537

Land (by State)

Puerto Rico

330 acres
Naval Radio Transmitter Facility
Aguada Co: PR 00602–
Landholding Agency: Navy
Property Number: 77200130013
Status: Underutilized
Reasons: Floodway
Secured Area

242 acres
Naval Radio Transmitter Facility
Salinas Co: PR 00751–
Landholding Agency: Navy
Property Number: 77200130014
Status: Underutilized
Reasons: Floodway
Secured Area

408 acres
Naval Radio Transmitter Facility
Isabela Co: PR 00662–
Landholding Agency: Navy
Property Number: 77200130015
Status: Underutilized
Reasons: Secured Area

[FR Doc. 01–18021 Filed 7–19–01; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 234–2001]

Privacy Act of 1974; System of Records

The Department of Justice proposes to modify the Controlled Substances Act Nonpublic Records System, JUSTICE/JMD–002. The primary purpose for establishing the system of records was to retain a nonpublic record as required by former section 404(b) of Public Law 91–513, the Controlled Substances Act, solely for use by the Federal courts in determining in subsequent proceedings, whether a person found guilty of violating that Act qualified for dismissal and discharge or for an expungement order under certain of the Act's provisions. That provision was removed from the Controlled Substances Act by the Sentencing Reform Act of 1984, Public Law 98–473, Title II, and incorporated in substantially identical form into a newly enacted provision of the criminal code, 18 U.S.C. 3607(b).

The Department now proposes to modify the system to reflect the appropriate authority for maintenance of the system. The routine use section of the system notice has been modified to delete unnecessary routine use disclosures.

In addition, the Department is revising the ''System Location'' and ''System Manager and Address'' sections to reflect a move of the system.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given 30 days in which to comment on the proposed routine uses. Any comments must be submitted in writing to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 by (30 days from publication of this notice).

As required by 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) implementing regulations, the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

A modified system description is set forth below.

Dated: June 18, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

JUSTICE/JMD–002

SYSTEM NAME:

Controlled Substances Act Nonpubic Records.

SYSTEM LOCATION:

U.S. Department of Justice, Justice Management Division, Information Management and Security Staff, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons found guilty for the first time of violating section 404 of the Controlled Substances Act (21 U.S.C. 844), i.e., persons who knowingly or intentionally possessed a controlled substance, except as authorized by the Act, whose cases have been in subject of a disposition under 18 U.S.C. 3607(a) or an order of expungement under 18 U.S.C. 3607(c).

CATEGORIES OF RECORDS IN THE SYSTEM:

Arrest records of law enforcement agencies, which include personal data, photographs, fingerprints, copies of court orders and Form OBD–140 (18 U.S.C. 3607).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained in accordance with Public Law 98–473, Chapter II, the sentencing Reform Act of 1984 (18 U.S.C. 3607).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are retained by the Department of Justice and are available only to a Federal court upon that court's issuance of an order demanding such records solely for the purpose of use by said court in determining whether or not a person found guilty of an offense under section 404 of the Controlled Substances Act (21 U.S.C. 844) qualifies for the disposition provided in 18 U.S.C. 3607(a) or the expungement provided in 18 U.S.C. 3607(c).

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

Subject to approval by the Attorney General or the President under 44 U.S.C. 2906, a record from this system of records may be disclosed to the National Archives and Records Administration (NARA) as part of a records management inspection conducted under the authority of 44 U.S.C. 2904.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE: RECORDS ARE STORED IN A LOCKED ROOM.

RETRIEVABILITY: RECORDS ARE INDEXED BY THE NAME OF THE OFFENDER.

SAFEGUARDS:

Access to these records is restricted to the Departmental Records Officer and Assistant Director, Information Security and Records Management, information Management and Security Staff, Justice Management Division.

RETENTION AND DISPOSAL:

Records are retained in accordance with records retention and disposal schedules approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Management and Security Staff, Justice Management Division, U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Same as the System Manager.

RECORD ACCESS PROCEDURES:

Same as the System Manger.

CONTESTING RECORD PROCEDURES:

Same as the system manager.

RECORD SOURCE CATEGORIES:

Law enforcement agencies and Federal courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted the system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(c) and (e) and have been published in the **Federal Register.** A proposed rule which update the justification for the exemption is being published in today's **Federal Register.**

[FR Doc. 01–16142 Filed 7–19–01; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 10, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or by E-Mail King-Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Lauren Wittenberg, OMB Desk Officer VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB 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 submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Veterans' Employment and Training Service (VETS).

Title: VETS–300 Cost Accounting Report and Manager's Report.

OMB Number: 1293–0NEW.

Affected Public: State, Local, or Tribal Government.

Frequency: Quarterly.

Report	Number of respond-ents	Frequency	Annual re-sponses	Average time per responses (hours)	Burden hours
VETS–300	53	Quarterly (Plus 1 final)	265	1.00	265
Manager's Report	1,200	Quarterly	4,800	4.00	19,200
Total	1,253		5,065	5.00	19,465

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The VETS–300 Cost Accounting Report provides data on State public employment program expenditures. VETS uses this data for program budgeting and administration purposes and to meet mandated reporting requirements to the President and Congress. Title 38 U.S.C. requires that local employment services provide report not less than quarterly to the Director for Veterans' Employment and Training for the State regarding compliance with Federal law and regulations with respect to special services and priorities for eligible veterans and eligible persons.

Currently, this information is collected by the Employment and Training Administration under OMB control number 1205–0240 which expires September 30, 2001. The information in the VETS–300 AND Manager's Report will no longer be collected under the currently assigned OMB control number. VETS is requesting that OMB approve the continued collection of this information under a new OMB control number.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–18150 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Solicitation for Grant Application (SGA 01–06); Customized Employment Grants

AGENCY: Office of Disability Employment Policy (ODEP), Department of Labor.

ACTION: Notice of applicability of funds and Solicitation for Grant Applications (SGA).

SUMMARY: The U.S. Department of Labor (DOL or the Department), Office of Disability Employment Policy (ODEP) announces the availability of $3.5 million to award up to seven competitive grants for strategic planning and implementation activities designed to improve the employment and career advancement of people with disabilities through enhanced availability and provision of customized employment services through the new One-Stop delivery system established under the Workforce Investment Act of 1998 (WIA) (Public Law 105–220, 29 U.S.C. 2801 *et seq.*).

This Customized Employment Grant program will provide funds to selected Local Workforce Investment Boards (Local Boards), which will be the lead entity in a consortium/partnership of public and private entities, to build the capacity in local One-Stop Centers to provide customized employment services to those persons with disabilities who may not now be regularly targeted for services by the One-Stop Center system. Grants funded under this program will also provide a vehicle for Local Boards to systemically review their policy and practices in terms of service to persons with disabilities, and to incorporate new and innovative practices, as appropriate.

Grants are for a one-year period and may be renewed for a period of up to four additional years at varying funding levels (see Section V) depending upon the availability of funds and the efficacy of the project activities. All forms necessary to prepare an application are included in this SGA.

DATES: One (1) ink-signed original, complete grant application plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 01–06, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. EST, August 20, 2001. Hand-delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Grant applications must be hand delivered or mailed to U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference SGA 01–06, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Applicants must verify delivery to this office directly through their delivery service and as soon as possible.

FOR FURTHER INFORMATION, CONTACT: Applications will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. Questions about this solicitation may be sent to Cassandra Willis, at the following Internet address: *willis-cassandra@dol.gov.*

Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Procurement Services Center after 4:45 p.m. EST, August 20, 2001, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 20, 2001;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, before August 20, 2001.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise place impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee is the date entered by the Post Office receiving clerk on the ''Express Mail Next Day Service—Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will *not* be accepted.

SUPPLEMENTARY INFORMATION:

I. Authority

Consolidated Appropriations Act, 2001, Public Law 106–554, 114 STAT 2763A–10, 29 U.S.C. 557(b).

II. Background

The President's New Freedom Initiative is designed to increase the number of people with disabilities who enter, reenter, and remain in the workforce. It is dedicated to increasing investment in and access to assistive technologies, a quality education, and increasing the integration of Americans with disabilities into the workforce and community life.

The Workforce Investment Act of 1998 (WIA) provides the infrastructure for streamlining services and securing employment through the One-Stop delivery system. WIA requires multiple programs and agencies (including state Vocational Rehabilitation agencies) to: (a) Form partnerships in this effort; (b) share expertise and coordinate resources; and, provide services to assist people in gaining and retaining employment. The One-Stop Career Centers which comprise this system are in a position to expand employment opportunities for people with disabilities, thus ensuring that the intent of the New Freedom Initiative is accomplished.

Under WIA, collaboration with multiple required partners [1] is intended to create a coordinated and streamlined system for the customer seeking employment. It is essential to involve additional states or local programs as partners with the One-Stop Center to enable many people with disabilities to have an increased opportunity for and choice in employment. These additional programs include, but are not limited to, state programs for Mental Retardation, Medicaid, Mental Health and Transportation; State Councils for Developmental Disabilities; state assistive technology programs, Small Business Development Centers and secondary education programs. While not required partners under WIA, these programs have expertise and/or resources that can contribute to expanding the employment and business opportunities for people with disabilities. In addition, community colleges, University Centers for Excellence in Developmental Disabilities, business incubators, lending institutions, foundations, faith-based organizations, and other state or local programs may also be critical partners. These agencies and programs may not be informed about the potential for coordinating resources and expertise with Local Boards and One-Stop Centers in order to increase employment, choice and wages for people with disabilities.

In addition, One-Stop Centers may elect to become employment networks under the Ticket-to-Work Program (42 U.S.C. 1320b–19), thus making it more likely that they will require expertise in customized employment strategies in order to successfully facilitate employment for people with disabilities who are recipients of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). Ticket-to-Work is providing increased employment opportunities for people with disabilities who receive SSI and/or SSDI benefits by addressing some of the major barriers encountered by these individuals as they attempt to gain or regain employment. Approximately eight million people with disabilities receive SSI and/or SSDI benefits. According to the U.S. General Accounting Office, less than one percent of these individuals leave the rolls each year as a result of paid employment. Of those who do leave, about one-third return within three years. The Ticket-to-Work program provides a variety of work incentives, including, greater choices of needed employment services, the continuation of Medicare eligibility for SSDI recipients and, at state option, health coverage under the Medicaid program to certain workers with disabilities, either by permitting them to purchase Medicaid coverage or by extending Medicaid eligibility to them without charge. As a result, there is unprecedented opportunity for these individuals to enter, or return to the workforce. Increasing numbers of individuals with disabilities will be approaching their local One-Stop Centers for assistance.

Many strategies exist for securing integrated, competitive employment for people with disabilities, including people who previously might have been considered ''nonfeasible'' for employment, and people who have been segregated in institutions, nursing homes, and day activity programs. Many

[1] Some of the required partners are adult education and literacy activities under Title II of WIA; post-secondary vocational education activities under the Carl Perkins Act (20 U.S.C. 2301 *et seq.*); vocational rehabilitation programs authorized under title V of the Workforce Investment Act; welfare-to-work programs; veterans employment and training activities, community services block grant employment and training activities; U.S. Department of Housing and Urban Development employment and training activities, and activities authorized under Title V of the Older Americans Act (WIA sec. 121(b), 29 USCA 2841(b), 20 CFR 662.200).

exemplary practices and promising strategies have emerged through decades of research and demonstration projects, and through other public and private activities promoting increased choice and self-determination for people with disabilities. These include approaches such as supported employment; supported entrepreneurship; individualized job development; job carving and restructuring; use of personal agents (including individuals with disabilities and family members); development of micro-boards, micro-enterprises, cooperatives and small businesses; and use of personal budgets and other forms of individualized funding that provide choice and control to the person and promote self-determination. These and other innovations hold the promise of dramatically increasing both employment and wages for people with disabilities, in part by increasing their choices for integrated, competitive employment, business ownership, micro-enterprise development, entrepreneurship, and other employment options that were previously seldom available.

The Presidential Task Force on Employment of Adults with Disabilities, which includes membership from eighteen Federal agencies, has conducted multiple activities relating to increasing employment for people with disabilities, including people who are SSI and/or SSDI beneficiaries, people who are in nursing homes, institutions, facility-based employment, day activity programs and other segregated settings where they are either not working or are earning less than minimum wage. A major result of these activities was the identification of the need for a sustained and coordinated initiative to build professional competency within One-Stop Centers and their partners, including providers and employers, about the use of customized employment strategies. Other findings include the need to: (1) Effectively expand the availability of personal agents, job development expertise, and other strategies for achieving customized employment for people with disabilities; (2) increase the number of eligible training providers who can provide customized employment assistance; (3) provide information, technical assistance, training and strategic planning that focuses on integrating customized employment strategies into the workforce investment system; (4) coordinate all necessary employment and related supports from WIA partners and other essential programs that are not required partners under WIA; and, (5) research and demonstrate alternative methods of determining effective performance by the workforce investment system in terms of service to people with disabilities.

In response to these findings ODEP will pursue a two-pronged approach:

1. Awarding these strategic planning and implementation grants for customized employment to develop and/or expand the capacity of local workforce systems to provide meaningful and effective opportunity through One-Stops for all persons with disabilities; and

2. Establishing a national technical assistance and training initiative to help increase the capacity of the workforce investment system to serve people with disabilities.

The combination of these activities will substantially contribute to achieving the goals of the President's New Freedom Initiative.

This SGA is designed to address the first of these activities. Establishing the supporting national technical assistance initiative is being implemented under a separate solicitation, and is expected to be in operation in time to assist the planning and implementation activities of grants funded under this solicitation.

The U.S. Department of Labor also offers Work Incentive Grants designed to enhance service delivery throughout the National One-Stop delivery system for people with disabilities. Recognizing that the One-Stop system generally has limited capacity to serve people with disabilities in the comprehensive nature envisioned under the WIA, the Work Incentive Grant program has multiple goals which include but are not limited to:

1. Establishing the capacity for coordinated, seamless service delivery to this client group for the many programs and services which typically impact their entry or retention in the workforce;

2. Increasing the availability of assistive technology in One-Stop Centers;

3. Ensuring the availability of trained One-Stop staff to serve people with disabilities;

4. Assuring outreach and marketing of One-Stop services to the disability community; and

5. Establishing or expanding linkages with public and private providers of this client group.

Twenty-three Work Incentive Grants were awarded in FY 2000 and another Solicitation for Grant Applications will be announced in the summer of 2001 as a continuing and on-going process of building the One-Stop infrastructure to most effectively meet the needs of customers with disabilities. The Work Incentive Grants are complementary yet distinct from the Customized Employment demonstration grants offered in this SGA. The Work Incentive Grants support systemic change through capacity building of the One-Stop infrastructure, whereas these Customized Employment Grants will serve as models of comprehensive service delivery which extends beyond WIA programs and services for individuals with disabilities who are the most disenfranchised under current service delivery systems.

This SGA is designed to develop comprehensive models of direct service delivery in the context of a One-Stop setting for individuals with disabilities with the greatest barriers to employment, many of whom have never been employed, are limited to subsidized employment, or may be considered unable to be employed. The CustomizedEmployment grants will involve cutting edge approaches such as use of customized employment strategies and active involvement of essential programs of both mandated and non-mandated partners of the workforce system.

III. Purpose

The purpose of this initiative is to maximize the capacity of, and outcomes from, One-Stop Centers and their partners to effectively serve people with disabilities through customized employment strategies, and to integrate those strategies into the policy and practice of the One-Stop and its partners in order to increase employment, choice and wages for people with disabilities.

For purposes of this solicitation the Department has chosen to specifically target the development and provision of customized employment to those people with disabilities identified in this section. However, the Department expects that once capacity for using customized employment strategies is developed or enhanced, the One-Stop Centers and their partners can expand use of these strategies to other groups of people with (and without) disabilities.

For purposes of this solicitation, the target groups are people with disabilities who are either unemployed or under-employed and are:

1. Receiving Supplementary Security Income (SSI) and/or Social Security Disability Insurance (SSDI); or

2. Participating in day programs (such as day habilitation, day activity or day health programs) or participating in facility-based or community employment and earning less than minimum wage; or

3. Participating in segregated employment and choosing to move to integrated, competitive employment; or

4. Awaiting employment services and supports following a move from a residential facility, or as part of a plan to move into a community under the Supreme Court decision in *Olmstead* v. *L.C. by Zimring,* 527 U.S. 581(1999); or

5. Transitioning from, or preparing to transition from, secondary school under a transition plan under part B of the Individuals with Disabilities EducationAct, as amended (20 U.S.C. 1400 *et seq.*), and who, without access to customized employment strategies, would likely be referred to one of the environments identified in (2), (3)or (4) above, but who prefers integrated, competitive employment or self-employment.

For purposes of this solicitation, customized employment means individualizing the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination of the strengths, needs, and interests of the person with a disability, and is also designed to meet the specific needs of the employer. It may include employment developed through job carving, self-employment or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being customized and individually negotiated to fit the needs of individuals with a disability. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

IV. Statement of Work

Eligible applicants for these grants are Local Workforce Investment Boards (LocalBoards) under the Workforce Investment Act. The Local Board may enter into numerous partnerships with other public and private entities, consistent with the proposed activities of the grant.

Grantees must implement training and staff development activities and demonstration projects designed to develop organizational capacity to serve people with disabilities in One-Stop Centers. These projects must develop professional competency in customized employment strategies and serve targeted people with disabilities. Workforce investment system partners and other non-required but essential programs must be included in this effort. Grantees must integrate customized employment strategies with the existing services available through the One-Stop Center and its partners, including through demonstrating alternative methods of measuring performance within the Once-Stop environment. The result of these efforts will be an increase in employment, choice and wages for people with disabilities through the use of customized employment, and the systemic evaluation and modification, as appropriate, of policies and practices to ensure that customized employment strategies are systemically included in the services available through the One-Stop Center.

Grantees must demonstrate collaborative activities across relevant stakeholder groups, including both required and non-required One-Stop partners, persons with disabilities, their parents and other family members, advocates, employers, community rehabilitation agencies, and others as appropriate.[2] Grantees must:

1. Develop professional competency and capacity for implementing a variety of innovative and promising practices through customized employment;

2. Mobilize needed services and supports;

3. Implement systems change demonstrations; and,

4. Implement other initiatives to ensure that these innovations and promising practices become part of the menu of services available through the workforce investment system.

Grantees must develop employment opportunities in a variety of jobs or industries and at a variety of levels, including self-employment and entrepreneurship, based on the strengths, needs and desires of the individual with a disability. They must organize services and supports in ways that provide informed choice and promote self-determination. In addition, grantees must establish employer involvement; track and respond to customer service and satisfaction for both persons with disabilities and employers; and provide services, including follow-up services to ensure job retention and career development.

It is expected that each grantee will become a ''model'' for both the state and the Nation in terms of demonstrating effective linkages and strategies through the One-StopCenter system. These models will demonstrate successful strategies for customized employment for people with disabilities which result in increased employment and wages. Each grantee must also review policy and practice as it relates to people with disabilities, including researching alternative methods for performance accountability that are relevant to the characteristics of this population.

Grantees must pursue the following objectives:

1. Develop and implement strategic planning and implementation activities across the One-Stop required partner programs as identified in the Workforce Investment Act, (WIA sec. 121(b), 29 USCA, 2841(b)(such as Vocational Rehabilitation and others as appropriate) as well as other essential programs (such as Medicaid, Medicare, Mental Health,Transportation, Small Business Development Centers, State Councils on Developmental Disabilities, community colleges, benefits counseling and assistance programs, lending and financial institutions), whose expertise, services, and/or funds could contribute to employment services and supports needed by people with disabilities in order to secure customized employment.

2. Develop local and statewide policy initiatives to ensure that customized employment and multiple innovative strategies and promising practices become part of the menu of services available to people with disabilities including investigating alternative methods for performance accountability that consider the characteristics of the population.

3. Develop and document the increased capacity of the One-Stop system, including WIA required partners, community providers of employment services, and other essential programs, to provide customized employment for persons with disabilities. Such capacity includes enhancing collaboration between required WIA partners and building new collaborative initiatives with other essential programs.

4. Develop and document the capacity of the One-Stop system to increase the wages of people with disabilities who are currently working at less than minimum wage through the use of customized employment strategies.

5. Develop an increased understanding by One-Stop Centers' staff about health care, work incentives, benefits planning, ''tickets'' and other provisions under the Ticket-to-Work and Work Incentives ImprovementAct of 1999 (42 USC 1320b–19 *et seq.*); and document increased use of these programs by the One-Stop Center and its partner programs to secure customized employment for recipients of SSI and/or SSDI who are entering the workforce or returning to work.

[2] These partners may become a subgroup or an advisory group of the Local Board. They may be specifically charged with coordinating funding, resources and expertise in order to increase customized employment for people with disabilities in the community.

6. Demonstrate and document the increasing use of resources from a number of system partners and other essential programs, including providing individual budgets (e.g., individual training accounts/contractual services; tickets; vouchers; and other sources of individualized funding or personal funding accounts) for persons with disabilities to obtain customized employment.

7. Develop and leverage linkages with other state and local initiatives that provide services and supports for people with disabilities (including, but not limited to, state systems change efforts which promote systems improvement and comprehensive coordination; initiatives involving health care; benefits planning and assistance; housing; transportation; education; supported employment; small business development; technology-related assistance; initiatives of private foundations; and faith-based programs and others as appropriate).

8. Educate relevant stakeholders, including state and local policymakers and systems personnel, about needed changes in policy and practice in order to increase customized employment and wages for people with disabilities. Organize education activities to enable customized employment and personalized supports to become available and used in local communities, including (as appropriate) activities necessary to secure adoption of the Medicaid buy-in in the state.

9. Collaborate with the national technical assistance cooperative agreement funded by the ODEP to provide assistance and training on increasing employment for adults with disabilities.

10. Identify and pursue other activities, as appropriate, to achieving the goals of these grants.

Funds must be used in a flexible manner, as determined appropriate by input from stakeholders and identified needs, so long as requirements for outcome and evaluation data and other requirements of Federal statutes, regulations, administrative requirements and OMB circulars and the requirements delineated in this SGA are met. Activities may include, the following possibilities:

1. Necessary staffing across agencies to implement grantee activities and otherwise demonstrate effective partnerships and interactions necessary to effectively leverage resources and expertise from partnering systems and programs.

2. Outreach to relevant stakeholders.

3. Strategic planning.

4. Demonstration activities which provide methods to increase the employment of people with disabilities that are designed for systemic inclusion (including but not limited to demonstrating the use of individual training accounts or contractual services, tickets, and individual budgeting initiatives; economic stimulus activities including low-interest loans for person-centered micro-boards focused on increasing economic prosperity for specific individuals with disabilities; entrepreneurial employment initiatives that are consumer-owned or operated; demonstrations of innovation and cutting-edge strategies providing personal control, choice and customized assistance resulting in employment, including business ownership, micro-enterprise development or development of cooperatives for persons with disabilities; and other supports needed by specific individuals with disabilities to increase choice and wages in employment).

5. Other activities necessary to address needs and achieve goals identified through strategic planning and implementation, including collection of necessary data and evaluation.

6. Collaboration with the education system, parents and families to ensure transition of young people with disabilities from school to customized employment or training, and documentation of the outcomes of such efforts.

7. Training and education activities (including training regarding Medicaid buy-in provisions and other policy implications for increasing employment through state activities) designed to further the goal of increasing customized employment for persons with disabilities. These training activities include the education of One-Stop and partner personnel; state systems personnel and policymakers; developing and disseminating educational information and materials; and otherwise promoting policy and practice to increase the wide spread community-based use of customized employment strategies and personalized supports.

8. Researching and demonstrating alternative methods of measuring WIA performance outcomes that consider the various characteristics of people with disabilities and developing demonstrations of performance measures that document new methods for measuring program effectiveness; and coordinating the availability of and access to assistive technology

9. Establishing connections to and collaborating with other entities, including employers, lending and financial institutions, foundations, faith-based organizations, institutions of higher education, consumer and family organizations, small business development centers and others, as appropriate, to further customized employment opportunities for persons with disabilities in local communities.

10. Educating the media and the general public about successful strategies for and the benefits of securing employment for people with disabilities. This will assist in obtaining long-term support for continuation of grantee activities following completion of funding.

11. Increasing the availability of personal agents and job development personnel offering customized services through customer-controlled approaches that result in customized employment (including demonstrating effectiveness of paying family members and/or other individuals with disabilities to serve as personal agents when selected by the individual with a disability to assist in negotiating and implementing employment plans and services.)

12. Assisting community providers of segregated employment services to develop integrated, competitive options for individuals with disabilities, including implementation of conversion and other organizational change initiatives conducted with segregated provider programs that wish to change their services to integrated employment.

Upon the award of a grant, grantees must begin a strategic planning and implementation process that will address multiple components of needed change. Planning, implementation and ongoing evaluation for continuous improvement are expected to be implemented from year one in recognition that dynamic planning will occur and evolve over time. By the end of year five, it is expected that a more long-term strategic plan will be in place for expanding the availability and provision of customized employment, and for systemically revising policy and practices consistent with this goal. All grantees must provide a detailed management plan for project goals, objectives and activities.

All grantees must collect and provide to the DOL information on the individuals with disabilities served under this grant and who secure employment through use of customized strategies (including information on types of jobs, wages and benefits secured by specific individuals with disabilities, and other areas addressed

through the linkages and networks facilitated by grant activities).

All grantees must agree to cooperate with an independent evaluation to be conducted by the Department of Labor. DOL will arrange for and conduct this independent evaluation of the outcomes, impacts, and accomplishments of each funded grant. Grantees must agree to make available records on all parts of grant activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the Department. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for grant implementation.

V. Funding Availability

The Department of Labor anticipates awarding up to seven grants with a range of between $400,000 and $750,000 each. These awards will be for a one-year period and may be renewed annually for up to four additional years for a total of five years depending upon the availability of funds and the efficacy of the grant activities, established through independent reviews conducted by the Department of Labor or its designee. Proposals must include budgetary information for a five-year period. The funding for Years Four and Five will be at successively lower levels, with funding during Year Four at 80 percent of third-year funds and during Year Five at 60 percent. Grantees are expected to use this grant as seed money to develop other public and private resources in order to ensure sustainability of grant activities following completion of the funding period.

Funds must not be used for modifying buildings or equipment for physical or communication accessibility, although the strategic planning should address how resources will be leveraged for such purposes from other sources, as appropriate.

VI. Eligible Applicants

Eligible applicants for these grants are restricted to Local Workforce InvestmentBoards (Local Boards) as established under the Workforce Investment Act (WIA sec.117,29 USCA 2832.) The Local Board may coordinate numerous partnerships with other public and private entities, consistent with proposed activities of the grant and applicable administrative requirements.

The U.S. Department of Labor encourages Local Boards to join with otherState/local entities and public/private non-profit organizations. Such entities and organizations could include state programs for Vocational Rehabilitation, Mental Health,Medicaid, Mental Retardation, Housing and/or Transportation; State Councils on Developmental Disabilities; Protection and Advocacy Programs; University Centers for Excellence in Developmental Disabilities; institutions of higher education; Centers for Independent Living (CIL's); disability advocacy and provider organizations; organizations of parents; federally-funded disability grant entities; Small Business Development Centers; cooperatives and micro-enterprises; lending and financial institutions; training programs; media and marketing agencies; employers; foundations; community and faith-based programs; and other organizations or programs which provide or support services and/or advocacy for people with disabilities. Letters of support and commitment from these programs must be included in the Appendix of the proposal.

Indian and Native American Tribal entities, or consortia of Tribes, may apply for these grants. These grants could involve coordination of services and enhancement to a One-Stop system approach for people with disabilities in a specific Indian community or covering multiple Tribal entities which may cut across multiple States and/or workforce investment areas. Grants to Indian and Native American tribal grantees are treated differently because of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act allowing for the government to government relationship between the Federal and Tribal Governments.

Please Note That Eligible Applicants Must Not be Classified Under the Internal Revenue Code as 501 (c)(4) Entity. See 26 U.S.C.506(c)(4). According to Section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

VII. Application Contents

There are three required Parts and an Appendix of the application. Requirements for each Part are provided in this application package, as are all required forms.

Part I—Project Financial Plan (Budget).

Part II—Executive Summary.

Part III—Project Narrative.

Appendices—Letters of Commitment/Support, Resumes, etc.

General Requirements—Three copies and an original of the proposal must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only. Page limits do not apply to the Project Financial Plan or the Appendices (assurances, resumes, bibliography or references as appropriate, and letters of support.) A font size of at least twelve (12) point is required throughout.

Part I—Project Financial Plan (Budget)

To be considered, applications must include a detailed financial plan which identifies by line item the budget plan designed to achieve the goals of this grant. TheProject Financial Plan must contain the SF–424, Application for Federal Assistance,(Appendix A) and an SF–424A Budget Information Sheet (Appendix B).

The Project Financial Plan (Budget) must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided.Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to bind the responsible financial and administrative entity for a grant should that application result in an award.

Part II—Executive Summary

The application must contain an Executive Summary limited to no more than two (2) single-spaced, single-sided pages. Each application must provide a grant synopsis which identifies the following:

1. The applicant;

2. The consortium partners; the organizations or systems they represent; and their role in grant implementation;

3 . Data on people with disabilities in the area, including, to the extent it is available, information about the target group for this solicitation and other data relevant to the proposed grant;

4. The geographic service area of the Local Board;

5. The planned period of performance (projected annually through a five year cycle, assuming grant renewals awards);

6. The actions already taken by the One-Stop system in the local area to address the needs of people with disabilities, including activities related to increasing availability of customized employment and leveraging resources and expertise across non-required partners of the One-Stop Centers;

7. A brief statement of the goals of the proposal and how they will be achieved; and,

8. Assurances of commitment in support of this proposal from the fiscal agent and all partner agencies.

Part III—Project Narrative

The Grant Narrative should provide complete information on how the applicant will address the requirements of this SGA and is limited to no more than 75 double-spaced, single-sided, numbered pages (not including Appendices).

Each application must provide, in response to the objectives of this SGA, a comprehensive strategy and implementation plan for developing capacity and providing customized employment through the One Stop system.

Appendix—Letters of Support and/or Commitment, Resumes

VIII. Evaluation Criteria/Selection

A. Evaluation Criteria

The Project Narrative should address the following evaluation element:

1. Statement of Need (10 Points)

Applicants must include in their proposed plan the following items.

a. The current employment circumstances facing people with disabilities in the area to be served, including barriers, facilitators, and resources, systems and activities that could be leveraged to address needed changes.

b. The number of persons with disabilities in the area who fit the other requirements of the defined target group of persons with disabilities who may be served under this grant.

c. Related issues that need to be addressed in order to develop and/or enhance capacity of the One-Stop system to use customized employment strategies to increase employment, choice and wages for persons with disabilities, including the contribution the proposed grant will make to influence systemic changes in the local workforce system.

2. Comprehensive Strategy for Strategic Planning and Implementation to Build Capacity for Customized Employment (25 points)

Applicants must include in their proposed plan the following items:

a. The technical plan to implement the purpose and objectives of thisSGA to enhance the capacity of the workforce investment system to increase employment, choice and wages for persons with disabilities through the use of customized employment strategies and to ensure that such strategies are systemically included in the policy and practice of the One-Stop Center(s);

b. The provision of necessary programmatic and physical access, including assistive technology, and compliance with section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), [as amended by the FY 2001 appropriation for military construction, Pub. L. No. 106–246(July 13, 2000)] in order to ensure access to persons with disabilities;

c. The plan for developing, implementing and expanding the availability and use of customized employment strategies throughout the WIA system of required partners and non-required programs;

d. The plan for how the expertise of the State Vocational Rehabilitation program will be used;

e. The plan to involve appropriate private entities, including but not limited to community-based organizations and faith-based organizations, as appropriate;

f. The plan for reaching people with disabilities and their families, including their involvement in grant design and implementation;

g. The plan for gaining support and assistance of area employers;

h. The plan for meeting the needs of individuals with disabilities from diverse cultures and/or ethnic groups;

i. The plan for expanding the use of customized employment strategies over time to:

1. All groups of persons with disabilities targeted under this solicitation; and

2. Other groups of individuals with disabilities (such as individuals who are receiving TANF benefits) following completion of the grant;

j. The plan for leveraging resources over time in order to ensure grant sustainability upon completion of funding, including the plan for implementing grant activities during years four and five at 80% and 60% funding, respectively; and

k. The plan for responding to the measures by which program success will be evaluated.

3. Collaboration and Coordination (15 Points)

Applicants must include in their proposed plan the following items:

a. Demonstrations of support and commitment from key organizations and individuals who advocate through or on behalf of persons with disabilities to participate in this effort;

b. Demonstrations of support and commitment from One-Stop partners and non-required but essential programs;

c. Demonstrations of support from area employers and employer organizations and evidence of their interest in participating in this effort.

d. Demonstrations of support from persons with disabilities and their families for implementation of the proposed activities; and,

e. A commitment to cooperate with ODEP's planned technical assistance initiative in a joint effort to develop capacity and disseminate promising practices so that the national workforce system can profit from this experience.

4. Quality of Grant Personnel (15 Points)

Applicants must include in their proposed plan the following items:

a. The names and qualifications of staff and related technical experts and consultants to support the objectives of this project for grantee and key sub-contractors and consultants. A resume of key staff and consultants must be included in the Appendix and must clearly indicate qualifications of each individual for designated role in project implementation.

b. The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been under-represented based on race, color, national origin, gender, age or disability.

5. Management Plan (10 Points)

Applicants must include in their proposed plan the following items:

a. The adequacy of the management plan to achieve the objectives of the proposed grant on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing grant activities;

b. The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed grant;

c. The extent to which the time commitments of key grant personnel are appropriate and adequate to meet the objectives of the proposed grant;

d. How the applicant will insure that customized employment strategies become a part of the menu of services available in the local community.

6. Evaluation and Continuous Improvement (15 Points)

Applicants must include in their proposed plan the following items:

a. All grantees must agree to participate in the independent evaluation outlined in Section IV of this SGA.

b. In addition, all grantees must implement ongoing evaluation of grant activities in order to determine

effectiveness of implementation efforts for continuous improvement of the grant. In determining the quality of the evaluation for continuous improvement, the Department considers the following:

1. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives and outcomes of the proposed grant;

2. The extent to which the methods of evaluation and continuous improvement are appropriate to the context within which the grant operates;

3. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the grant and will produce quantitative and qualitative data to the extent possible (including data on wages, wage changes, benefits, types of jobs, customer satisfaction, resources leveraged from partner programs, systemic changes implemented to sustain grant over time); and

4. The extent to which the evaluation will provide guidance about effective strategies suitable for replication in other settings.

7. Adequacy of Resources and Budget (10 Points)

Applicants must include in their proposed plan the following items:

a. The adequacy of support for grant implementation, including facilities, equipment, supplies, and other resources;

b. The extent to which the budget is adequate to support the proposed grant.

B. Selection Criteria

Acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements andOMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ODEP's award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (see Appendix A), which constitutes a binding offer. The GrantOfficer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the Government, considering factors such as:

1. Findings of the grant technical evaluation panel;

2. Geographic distribution of the competitive applications; and,

3. The Project's Financial Plan.

IX. Reporting

The Department of Labor is responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement, the grant agreement and other applicable administrative requirements. Applicants should assume that Department staff or their designees will conduct at least one on-site project review. In addition, all grantees will be expected to provide information on individuals with disabilities securing employment through use of customized strategies (including information on types of jobs, wages and benefits secured by specific individuals with disabilities, and other areas addressed through the linkages and networks facilitated by project activities).

Grantees will be required to submit periodic financial and participation reports under the Customized Employment grant program. Specifically the following reports will be required:

1. Monthly progress reports, during initial start-up and implementation of the project (approximately six months), and quarterly reports thereafter. It is estimated that the monthly report will take five hours to prepare during the first six months of the grant. The quarterly report is estimated to take ten hours during the remainder of the grant. The final report is estimated to take 20 hours. The Department will work with the grantee to identify the requirements of the various reports, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction.

2. Standard Form 269, Financial Status Report Form, on a quarterly basis;

3. Final Project Report, including an assessment of project performance and outcomes achieved. This report will be submitted in hard copy and on electronic disk using a format and instructions which will be provided by the Department. A draft of the final report is due to the Department 45 days before the termination of the grant.

DOL will arrange for and conduct an independent evaluation of the outcomes, impacts, and accomplishments of each funded project. Grantees must agree to make available records on all parts of project activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the Department. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for project implementation.

X. Administration Provisions

A. Administrative Standards and Provisions

The grant awarded under this SGA shall be subject to the following:

29 CFR Part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements

29 CFR Part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments

B. Allowable Cost

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and Local Government—OMB Circular A–87

Nonprofit Organizations—OMB Circular A–122

Profit-making Commercial Firms—48 CFR Part 31

Profit will *not* be considered an allowable cost in any case.

Signed at Washington, DC this 17th day of July, 2001.

Daniel P. Murphy,

Grant Officer.

Appendix A. Application for Federal Assistance, Form SF 424

Appendix B. Budget Information Sheet, Form SF 424A

Appendix C. Assurances and Certifications Signature Page

Instructions for the SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for

reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION:		**3. DATE RECEIVED BY STATE**	State Application Identifier
Application ☐ **Construction** ☐ **Non-Construction**	Preapplication ☐ **Construction** ☐ **Non-Construction**	**4. DATE RECEIVED BY FEDERAL AGENCY**	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and weather budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

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BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.

[FR Doc. 01–18209 Filed 7–19–01; 8:45 am]
BILLING CODE 4510–23–C

DEPARTMENT OF LABOR

Solicitation for Grant Application (SGA 01–08); High School/High Tech Start-up Grants

AGENCY: Office on Disability Employment Policy, Department of Labor.

ACTION: Notice of applicability of funds and solicitation for grant applications (SGA).

SUMMARY: The U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP) announces the availability of $400,000 to award eight competitive grants in the amount of $50,000 each. This Solicitation for Grant Application (SGA) invites proposals from eligible candidates which include: not-for-profit organizations established under section 501(c)(3) of the Internal Revenue Code; public secondary educational institutions; Job Corps centers (no fee/profit allowed); local government entities; or Local Workforce Investment Boards. Grants will be awarded for a one-year period and may be renewed with an additional optional grant for a second year at $25,000. After these two years of support, it is anticipated that High School/High Tech (HS/HT) programs will sustain themselves with the support of other resources.

The purpose of these grants is to fund the start-up of new demonstration High School/High Tech program sites. ODEP was recently established to provide disability policy guidance to the Department of Labor and its agencies. This new office absorbed the former President's Committee on Employment of People with Disabilities (PCEPD) and its existing demonstration projects, including HS/HT. Under this SGA, these new HS/HT sites must be developed by, or in partnership with, any program that has received Workforce Investment Act of 1998 (WIA) funds to serve youth. The goal of these grants is to begin and to operate a HS/HT site for youths with disabilities either in partnership with, or led by, a WIA youth program.

HS/HT is a series of nationally established model programs designed to provide young people with disabilities with an opportunity to explore their interest in pursuing further education leading to technology-related careers. These locally directed and supported programs serve either in-school or out-of-school youth with disabilities in a year long program of corporate site visits, mentoring, job shadowing, guest speakers, after school activities and paid summer internships. This SGA is designed to demonstrate both the merits and techniques of bringing the High School/High Tech program into an alignment and full partnership with WIA's youth-related programs.

DATES: One (1) ink-signed original, complete grant application plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 01–08, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. est, August 20, 2001. Hand-delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Grant applications must be hand delivered or mailed to U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference SGA 01–08, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Applicants must verify delivery to this office directly through their delivery service and as soon as possible.

FOR FURTHER INFORMATION, CONTACT: Applications will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. Questions concerning this solicitation may be sent to Cassandra Willis at the following Internet address: willis-cassandra@dol.gov.

Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Procurement Services Center after 4:45 p.m. EST, August 20, 2001, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 20, 2001;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to August 20, 2001.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise place impression(not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will *not* be accepted.

SUPPLEMENTARY INFORMATION:

I. Authority

Consolidated Appropriations Act, 2001, Public Law 106–554, 114 STAT 2763A–10, 29 USC 557(b).

II. Background

The U.S. Department of Labor's new Office of Disability Employment Policy (ODEP), the sponsoring agency of this SGA, was formed under the authority of the DOL's fiscal year 2001 appropriations, and by a supporting Executive Order transferring the assets of the former President's Committee on Employment of People with Disabilities (PCEPD) to this new DOL office. ODEP operates a number of programs which are designed to assist with the employment and training of persons with disabilities, including youths with disabilities.

The current expectations of both public education and workforce development systems, as well as employers, parents and young people with disabilities often fail to over look the potential that young people with disabilities have for jobs and careers in technology-related occupations. As a result, youths with disabilities are seldom afforded post-secondary preparation and educational opportunities leading to internships and placements in technology-related careers. This is significant of potential when we realize that: (1) People with disabilities have already demonstrated that they can be successful in these occupations; (2) technology jobs represent an ever increasing segment of the workforce; and, (3) many current school-to-careers initiatives do not always meaningfully include students with disabilities.

The Workforce Investment Act (WIA) youth-focused programs and activities hold tremendous potential to support career development activities for young people with disabilities. High School/High Tech (HS/HT) is an existing program that has proven effective at getting high school aged youth with disabilities interested in technology careers. By linking these two existing programs, students with disabilities will have the opportunity to participate in meaningful school-to-career initiatives.

HS/HT programs currently operate in 60 communities, across the nation. As HS/HT is a community-based partnership, different entities run the local HS/HT operations across the country. Current HS/HT operators

include non-profits (Goodwill Industries, Centers for Independent Living, United Cerebral Palsy Affiliates, National Urban League, NAACP, and others) and school districts. Funding for the sites is managed locally. Therefore, funding comes from a variety of local, state, and national resources.

HS/HT graduates with disabilities demonstrate at least a doubling of postsecondary education achievements. In some HS/HT programs, as many as 70% of their HS/HT graduates move on to postsecondary education. HS/HT clearly enhances expectations, educational achievements and eventual employment outcomes for a population who, without this intervention, is far more likely to move onto the Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) rolls than to find competitive employment in technology related occupations. As a community-based program, the HS/HT program works within community systems to help coordinate the delivery of education and transition services to students with disabilities. Locally based HS/HT programs represent community-based partnerships of stakeholders that include employers, educators, consumers, family members, workforce system agencies, and rehabilitation professionals. The HS/HT program offers local WIA programs proven techniques for developing improved systems and employment outcomes for young people with disabilities.

The goals of HS/HT match WIA's youth programming themes of employment preparation, educational achievement, support, and leadership. The HS/HT model includes eight of the ten WIA required youth programming elements:

1. Summer employment opportunities;
2. Work experience;
3. Occupational skills training;
4. Tutoring;
5. Support services;
6. Adult mentoring;
7. Comprehensive guidance; and
8. Leadership development, as described in WIA, sec. 129 (c).

Nonetheless, WIA and HS/HT programs have different areas of expertise. By linking these two programs, youth who are often under served and misunderstood will receive effective and appropriate services.

Under a separate SGA, applications are being sought for a proposed WIA Disability Technical Assistance Consortium for Youth. Among its responsibilities will be to provide technical assistance support to the new HS/HT demonstrations, proposed to be initially funded under this SGA, as well as to support the broader HS/HT network of programs, helping to integrate them into existing WIA youth programs. Ultimately, it is envisioned that the HS/HT Program will become one more model program helping national WIA youth initiatives better serve youth with disabilities.

III. Purpose

The purpose of this SGA is to create new HS/HT programs that will coordinate their operations with WIA youth programs that will demonstrate how they can be mutually supportive and reach a common goal.

ODEP operates a number of programs that are designed to assist with the employment and training of persons with disabilities, including youth with disabilities. One of ODEP's key youth programs is the High School/High Tech (HS/HT) program.

The High School/High Tech programs work with community systems to coordinate the delivery of educational and transitional services to youths with disabilities. Local High School/High Tech programs represent partnerships of local, state and national stakeholders that include employers, educators, rehabilitation professionals, consumers, and parents. The High School/High Tech Program works to provide universities and community colleges with future students and to provide high tech businesses with qualified potential candidates with disabilities.

As a community-based, work-based, and school-based program, High School/High Tech is designed to provide opportunities for students with disabilities to explore careers in technology related occupations. HS/HT students across the nation learn first-hand what it's like to work in high tech environments. Site visits, mentoring, job/career shadowing, and paid summer internships all provide students with the opportunities to learn more about careers in science, engineering and technology-related fields. HS/HT students also work on developing career goals. In localities where a HS/HT program is in place, 20 percent to 70 percent of the program participants go on to post-secondary education. The national average for the population, without this intervention, is six percent to nine percent (American Council on Education, 1999).

To learn about the structure and operations of the High School/High Tech Program, consult the High School/High Tech Program Guide at: *http://www.dol.gov/dol/odep/public/pubs/hsht00/toc.htm.*

IV. Statement of Work

The Project Narrative, of the grant application must provide complete information on how the applicant will address the requirements of this SGA outlined here. All grantees must:

1. Establish either leadership from, or a strong working relationship with a WIA youth-related entity or program (area Youth Councils, Job Corps Centers, Youth Opportunity Grantees, WIA Formula-Funded Youth Programs, WIA Native American programs or WIA Migrant Worker programs), in partnership with other community partners (e.g., area disability organizations, state or local committees on employment of people with disabilities, centers for independent living, special education, vocational rehabilitation, interested employers) in the establishment and operation of a HS/HT program for their locality;
2. Identify how the HS/HT model can provide WIA youth-related programs with a program model designed to improve the continuing (post-secondary) education and employment outcomes for high school age young people with disabilities;
3. Identify how the HS/HT model can deliver WIA's youth program themes and required elements to young people with disabilities;
4. Describe a plan to serve 10–30 young people with disabilities annually, by providing the core elements of a HS/HT program (corporate site visits, mentioning, job shadowing, relevant guest speakers, after school activities and paid summer internships);
5. Document their willingness to cooperate with ODEP and its technical assistance efforts to provide information and advice to other WIA youth programs on the how the HS/HT model can be replicated;
6. Describe plans to report demographic characteristics of program participants, types of programming activities and program outcomes (post-secondary education and employment) of youth with disabilities served through HS/HT;
7. Describe the strategy for gaining the support of area employers, people with disabilities and their family members;
8. Identify the potential and confirmed sources of funds or in-kind/goods and services and estimated dollar values; and,
9. Describe how the needs of individuals with disabilities from diverse cultures and/or ethnic groups will be addressed.

V. Funding Availability

The period of performance will be 12 months from the date of execution by

the Government. The grant may be renewed with an additional optional grant for a second 12 months at $25,000. After these two years of support, it is anticipated that HS/HT programs will sustain themselves with the support of other resources.

VI. Eligible Applicants

All non-profit organizations and agencies, including faith-based organizations, capable of starting and successfully operating a High School/High Tech program, in alignment with a WIA youth program, are eligible. This includes not-for-profit organizations, established under Section 501(c)(3) of the Internal Revenue Code, secondary and post-secondary educational institutions, a Job Corps center (no fee/profit allowed), an entity of local government, or a local Workforce Investment Board.

Please Note That Eligible Grant Applicants Must Not be Classified Under the Internal Revenue Code as a 501(c)(4) Entity. See 26 U.S.C. 506(c)(4). According to Section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

VII. Application Contents

There are three required sections of the application. Requirements for each are provided in this application package.

Section I—Executive Summary
Section II—Project Narrative
Section III—Budget Information

General Requirements—Three copies and an original of the proposal must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only.

Application—Section I; Executive Summary

Limited to no more than two single spaced, single sided pages, each application must provide an executive summary, which identifies the following:

1. The type of organization the applicant represents;
2. WIA-related leadership/partnership arrangement;
3. Any additional consortium partners and the type of organization they represent;
4. The geographic service area;
5. The service area, whether an area within or a whole local workforce investment area, or, more than one workforce investment area; and
6. The planned period of performance (projected annually through a two year cycle, assuming grant renewal award).

Application—Section II; Project Narrative

The Project Narrative format shall be no more than 20 double spaced, single sided, numbered pages. Each Project Narrative should meet the statement of work outlined in section IV above.

Application—Section III; Budget Information

Applications must also include a detailed financial plan which identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Proposal must contain the SF–424, Application for Federal Assistance, (Appendix A) and Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

VIII. Evaluation Criteria/Selection

A. Evaluation Criteria

The application must include appropriate information of the type described below.

1. Significance of the Proposed Project (15 Points)

In evaluating the significance of the proposed project, the Department will consider the following factors:

a. The current employment issues/circumstances facing young people with disabilities in the area to be served.

b. The numbers of young persons with disabilities in the area to be served who are in special education, general education or out of school who are expected to be served by under this grant.

c. The related issues that need to be addressed in order to better serve youth with disabilities in selected WIA youth entities and programs (area Youth Councils, Job Corps Centers, Youth Opportunity Grantees, WIA Formula-Funded Youth Programs, WIA Native American or WIA Migrant Worker programs) and how this proposed HS/HT program can help impact these issues.

2. Quality of the Proposed Project (30 Points)

In evaluating the quality of the proposed project, the Department will consider the following factors:

a. The plan for cooperation with WIA youth programs (Local Boards, including their Youth Councils, Job Corps Centers, Youth Opportunity Grantees, WIA Youth Formula-Funded Programs, WIA Native American or WIA Migrant Worker programs) in partnership with other community partners (e.g., area disability organizations, state or local committee on employment of people with disabilities, centers for independent living, special education, vocational rehabilitation, interested employers, and family groups) in the establishment and operation of a HS/HT program for their locality.

b. How the HS/HT program will provide selected WIA youth-related programs with a program model responding to WIA's youth themes and elements, to improve the continuing (post-secondary) education and employment outcomes for high school age young people with disabilities.

c. The plan for recruiting and serving 10–30 young people with disabilities, for each of the possible two years of funding, with the core elements of a HS/HT program (corporate site visits, mentioning, job shadowing, relevant guest speakers, after school activities and paid summer internships).

d. The plan for tracking the demographic characteristics of program participants, types of programming activities conducted as well as HS/HT participant outcomes. These include:

1. Numbers of youths with disabilities placed in competitive employment, including paid internships;
2. Numbers of youths with disabilities who continue with post secondary education; and,
3. Comparative data on local youths with disabilities not served in the HS/HT program.

e. The plan for tracking progress in developing WIA partnerships; using related resources (WIA Youth Programs); regional and national leadership activities to help WIA Youth programs consider the HS/HT model in their area; and, assessing the overall impact of the model HS/HT program on a broader community response to the employment and training needs of youths with disabilities in the community.

3. Collaboration and Coordination (20 Points)

In evaluating the collaboration and coordination of the proposed project,

the Department will consider the following factors:

a. Statement(s) of support and leadership from one or more of your area's Youth Council, Job Corps Centers, Youth Opportunity Grant Programs, WIA Formula Funded Youth Programs, WIA Native American or WIA Migrant Worker program.

b. Support from key community organizations, especially special education (Individualized Education Plan—IEP coordination, where applicable) and vocational rehabilitation organizations.

c. Support from area employers, people with disabilities and family members.

d. Demonstrated financial commitment from community or state partners.

4. Innovations and Model Services (20 Points)

In evaluating the innovations and model services of the proposed project, the Department will consider the following factors:

a. Strategies to cooperate in ODEP's technical assistance efforts providing information and advice to other WIA youth programs on the how the HS/HT model can be replicated by them in their communities.

b. The plan for sustaining the HS/HT program beyond the one or two year start-up grant by connecting it with an area WIA youth program.

c. The strategy for meeting the needs of youth with disabilities from diverse cultures and/or ethic groups. (Note: the NAACP, National Urban League, and La Raza all operate at least one model HS/HT program dedicated to serving minority youth with disabilities, hence a potential exists to connect with your area's affiliate of these organizations).

5. Demonstrated Capability of the Organizations (15 Points)

In evaluating the demonstrated capability of the organization(s) involved in proposed project, the Department will consider the following factors.

a. The names and qualifications of staff and related technical experts to support the objectives of this SGA.

b. Examples of prior successes in serving youths with disabilities.

B. Selection Criteria

Acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require that all procurement transaction shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (see Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

A. Findings of the grant technical evaluation panel; and,

B. Geographic distribution of the competitive applications.

IX. Reporting

Grantees are required to provide typed reports to DOL/ODEP or its designee on the status of their program on a quarterly basis by March 30, June 30, September 30, and December 31, for a one year period. It is estimated that the quarterly report will take five hours to complete.

The grantee must also furnish a separate financial report to ODEP on the quarterly basis mentioned above.

X. Administration Provisions

A. Administrative Standards and Provisions

Grantees are strongly encouraged to read these regulations before submitting a proposal. The grant awarded under this SGA shall be subject to the following, as applicable:

29 CFR part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.

29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements.

29 CFR part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

B. Allowable Cost

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and Local Government—OMB Circular A–87

Nonprofit Organizations—OMB Circular A–122

Profit-making Commercial Firms—48 CFR Part 31

Profit will not be considered an allowable cost in any case.

Signed at Washington, DC this 17th day of July, 2001.

Daniel P. Murphy,

Grant Officer.

Appendix A. Application for Federal Assistance, Form SF 424

Appendix B. Budget Information Sheet, Form SF 424A

Appendix C. Assurances and Certifications Signature Page

INSTRUCTIONS FOR THE SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required face sheet for preapplication submitted for federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and entry:

1. Self-explanatory.

2. Date application submitted to federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable),

If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.
—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, countries, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. The question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt includes delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application).

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APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Prescribed by OMB Circular A-102

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Instructions for the SF–424a

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Column number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or substract this amount from the total project amount, Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation of a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter the totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)—(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16—19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)—(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

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BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.

[FR Doc. 01–18208 Filed 7–19–01; 8:45 am]
BILLING CODE 4510–23–C

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June and July, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated;

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,000; American Nickeloid Co., Walnutport, PA
TA–W–39,008; Camrose Technologies, LLC, Ada, OK
TA–W–38,832; Decatur Casting, Decatur, IN
TA–W–39,989; Trico Steel Co., Decatur, AL
TA–W–39,094; Antec Corp., Network Powering and Enclosures, El Paso, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,456; Huck Fasteners, Altoona, PA
TA–W–39,145; Marathon Oil Co., Regional Office, Tyler, TX
TA–W–38,645; Texel USA. Inc., Henderson, NC
TA–W–38,954; Omicron Industries, Inc., El Paso, TX
TA–W–39,159; & Al; Anderson Electrical Products, Aluminum Casting Dept., Elkton, TN and Anderson Electrical Products, Aluminum Finishing & Inspection Dept, Elkton, TN
TA–W–39,426; Donna Lynn Fashions, Inc., Bronx, NY
TA–W–39,427; Lori Lynn Fashions, Inc., Bronx, NY
TA–W–39,428; Giordano Fashions, Limited, Woodside, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA–W–39,490; Sagebrush Corp., Caledonia, MN
TA–W–39,468; Veco Alaska,Inc., Anchorage, AK

The investigation revealed that criteria (1) has not been met. A significant number of proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–39,119; Wire Maid Manufacturing Limited, Schofield, WI

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for

TA–W–39,464; Corning Frequency Control, Mt Holy Springs, PA

Affirmative Determination for Worker Adjustment Assistance

The following certification have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,250; Pilkington Libbey-Owens-Ford,North America OE Automotive, Sherman, TX: June 24, 2001.
TA–W–38,938 & A, B; Fruit of The Loom, Winfield Cotton Mill, Winfield, AL, Aliceville Cotton Mill, Aliceville, Al and Martin Mills, Inc., St. Martinville, LA: March 5, 2000.
TA–W–39,289; Shieldalloy Metallurgical Corp., Newfield, NJ: April 23, 2000.
TA–W–39,124; United Foundries, Youngstown, OH: April 16, 2000.
TA–W–39,421; Dunbrooke Industries, Inc., Canton, SD: May 17, 2000.
TA–W–39,496; Master Products Manufacturing Co., Martin Yale Industries, Inc., Los Angeles, CA: June 1, 2000.
TA–W–39,300 & A; Nokia, Inc., Nokia Mobile Phones, Alliance Gateway and Temporary Workers of Remedy Intelligent Staffing, Forth Worth TX and Nokia, Inc., Nokia Mobile Phones, Trinity Bouldvand and Temporary Workers of Remedy Intelligent Staffing, Forth Worth, TX: May 7, 2000.
TA–W–39,239; D'Clase Cutting Services L.C., Medley, FL: April 26, 2000.
TA–W–38,957; Nu-Kote International, Franklin, TN: March 20, 2000.
TA–W–39,196; J.C. Viramontes, Inc., d/b/a/ International Garment Processors, El Paso, TX: May 30, 2000.
TA–W–38,754; Westpoint Stevens, Inc., Rosemary Plants, Roanoke Rapids, NC: February 15, 2000.
TA–W–39,170; Standard Corp., Manufacturing Group, Lugoff, SC: April 10, 2000.
TA–W–39,912; Co-Steel, Perth Amboy, NJ: February 20, 2001.
TA–W–39,195; Tyco Electronics, Harrisonburg, VA: May 7, 2000.
TA–W–39,369; Hager Hinge Co., Greenville, MS: May 16, 2000.
TA–W–39,018; Alamac Knit Fabrics, Inc., Lumberton, NC: May 26, 2001.
TA–W–39,018A & B; Alamac Knit Fabrics, Inc., New York, NY and Los Angeles, CA: March 30, 2000.
TA–W–39,402 & A; Phelps Dodge Corp., Chino Mines Co., Hurley, NM: June 4, 2000 and Santa Rita, NM: May 12, 2001.
TA–W–38,840; Globe Manufacturing Corp., Spandex Operations, Fall River, MA: February 12, 2000.
TA–W–38,994; Irwin Manufacturing Corp., Ocilla, GA: March 26, 2000.
TA–W–39,270; Bemis Co., Inc., Vancouver, WA: May 3, 2000.
TA–W–39,204; A–1 Manufacturing, Inc., Brilliant, AL: April 16, 2000.
TA–W–39,353; Double Springs Corp., Double Springs, AL: May 14, 2000.
TA–W–38,927; Cascade Steel, McMinnville, OR: March 19, 2000.
TA–W–38,936; Fruit of The Loom, Greenville Manufacturing, Greenville, MS: March 5, 2000.
TA–W–39,231; Saturn Electronics and Engineering, Inc., Marks, MS: April 17, 2000.
TA–W–39,293; Innovo, Inc., Innovo Group, Inc., Knoxville, TN: May 2, 2000.
TA–W–39,562; ADC Mersum US, Inc., South Hackensack, NJ: June 13, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section

250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June and July, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determination NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04717; Omicron Industries, Inc., El Paso, TX

NAFTA–TAA–04949; Z Z Logging, Inc., Mt. Hood, OR

NAFTA–TAA–04947; Huck Fasteners, Altoona, PA

NAFTA–TAA–04910; Shieldalloy Metallurgical Corp., Newfield, NJ

NAFTA–TAA–04582; Pangborn Corp., Hagerstown, MD

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

NAFTA–TAA–05016; Sagebrush Corp., Caledonia, MN

The investigation revealed that criteria (2) and (4) have not been met. Sales or production, or both, did not decline during the relevant period as required for certification. There was no shift in production from the subject firm to Canada or Mexico.

NAFTA–TAA–04923; Corning Frequency Control, Mt. Holy Springs, PA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04791; Southwire Co., Arkansas Plant, Osceola, AR: April 12, 2000.

NAFTA–TAA–04798; Tyco Electronics, Shewsbury Molding Plant, Shrewsbury, PA: April 20, 2000.

NAFTA–TAA–04905 & A; Anderson Electrical Products, Aluminum Casting Department Elkton, TN and Aluminum Finishing and Inspection Department, Elkton, TN: April 6, 2000.

NAFTA–TAA–04864; Bemis Co., Inc., Vancouver, WA: May 3, 2000.

NAFTA–TAA–05020; D'Clase Cutting Services L.C., Medley, FL: May 22, 2000.

NAFTA–TAA–04998; BASF Corp., NLD Div., Rensselaer, NY: May 21, 2000.

NAFTA–TAA–04950; Pilkington Libbey-Owens-Ford, North American OE Automotive, Sherman, TX: June 24, 2001.

NAFTA–TAA–04748; Antec Corp., Network Powering and Enclosures, El Paso, TX: March 28, 2000.

NAFTA–TAA–04989; Master Products Manufacturing Company, Martin Yale Industries, Inc., Los Angeles, CA: June 1, 2000.

NAFTA–TAA–05010; ADC Mersum US, Inc., South Hackensack, NJ: June 13, 2000.

NAFTA–TAA–04839; Emerson Electric Company, White-Rodgers Div., Affton, MO: April 11, 2000.

NAFTA–TAA–04971; Martin Mills, Inc., A Div. of Fruit of The Loom, St. Martinville, LA: May 8, 2000.

NAFTA–TAA–04695; J.C. Viramontes, Inc., d/b/a International Garment Processors, El Paso, TX: May 30, 2000.

I hereby certify that the aforementioned determinations were issued during the month of June and July, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–18151 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,052]

Bechtel Jacobs LLC, Piketon, Ohio; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 16, 2001, in response to a worker petition which was filed by PACE Union Local 5–689 on behalf of workers at Bechtel Jacobs LLC, Piketon, Ohio. The workers are involved in activities related to fabricating uranium enriched nuclear fuel.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 10th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18152 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to

paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than July 30, 2001.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than July 30, 2001.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of July 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Lucent Technologeis—Agere Systems (IBEW).	Reading, PA	06/05/2001	NAFTA–4,954	Opteolectronic devices.
Agere Systems (IBEW)	Allentown, PA	06/06/2001	NAFTA–4,955	Opteolectronic devices.
Tyco Kendall Healthcare (Wkrs)	Chatsworth, CA	05/30/2001	NAFTA–4,956	Medical equipment and supplies.
Nortel Networks (Wkrs)	Simi Valley, CA	05/22/2001	NAFTA–4,957	Research, development and engineering.
Philips Display Components (Wkrs)	Ottawa, OH	06/07/2001	NAFTA–4,958	TV tubes.
Coastcast Corporation (Co.)	Rancho Dominguea, CA.	06/05/2001	NAFTA–4,959	Steel golf club heads.
Durr Robotics—Behr Systems (Wkrs)	Auburn Hills, MI	05/14/2001	NAFTA–4,960	Booths, feather dusters & feather rolls.
Steiger Lumber (Co.)	Bessemer, MI	05/23/2001	NAFTA–4,961	Hardwood boards.
Ogemaw Firge (UAW)	West Branch, MI	05/15/2001	NAFTA–4,962	Forged components for auto.
Monticello Manufacturing (Co.)	Monticello, KY	06/05/2001	NAFTA–4,963	Men's and ladies shirts and blouses.
Rockwell Collins (Co.)	Pomona, CA	06/05/2001	NAFTA–4,964	In flight entertainment systems.
Hibbing Taconite (Wkrs)	Hibbing, MN	06/06/2001	NAFTA–4,965	Taconite ore pellets.
Penn companies (The) (Co.)	St. Peters, MO	06/05/2001	NAFTA–4,966	Emboridered emblems.
Mrs. Alison's Cookies (Wkrs)	St. Louis, MO	06/04/2001	NAFTA–4,967	Baked goods (sweets).
Thomson Multimedia (Co.)	Dunmore, PA	06/05/2001	NAFTA–4,968	Color tv picture tubes.
Symbol Technologies	Holtsville, NY	06/04/2001	NAFTA–4,969	Radio product.
Erie County Technical School (AFT)	Erie, PA	06/06/2001	NAFTA–4,970	Teachers.
Martin Mills (Co.)	St. Martinville, LA	06/07/2001	NAFTA–4,971	Wearing apparel.
Besser (IBB)	Alpena, MI	06/07/2001	NAFTA–4,972	Concrete requipment & machinery.
Imperial Home Decor (Wkrs)	Knox, TN	06/13/2001	NAFTA–4,973	Wallpaper.
Winky Textiles (Co.)	New York, NY	06/04/2001	NAFTA–4,974	Textiles.
ABB Power T and D Company (Wkrs)	Jefferson City, MO	06/05/2001	NAFTA–4,975	Transformers.
Eaton Corporation (Wkrs)	Shenandoah, IA	05/24/2001	NAFTA–4,976	Heavy duty truck transmissions.
Perlos of Texas (Wkrs)	Ft. Worth, TX	06/11/2001	NAFTA–4,977	Mobile phones.
Industrial Seaming (Co.)	Granite Falls, NC	06/11/2001	NAFTA–4,978	Sewing crib sheets.
Johnson Controls (Co.)	Taylor, MI	06/12/2001	NAFTA–4,979	Automobile seats.
Lomac (ICWUC)	Muskegon, MI	06/12/2001	NAFTA–4,980	Chemicals mixing and blending.
Oneal Steel Weldment (Wkrs)	Roanoke, VA	06/11/2001	NAFTA–4,981	Steel parts.
Future Knits (Co.)	Pineville, NC	06/12/2001	NAFTA–4,982	T-shirts.
Flextronics Enclosures (Co.)	Chambersburg, PA	06/12/2001	NAFTA–4,983	Outdoor enclosures.
Domco—Tarkett (Wkrs)	Whitehall, PA	06/06/2001	NAFTA–4,984	Sheet vinyl flooring.
Winona ( )	Nashville, IN	06/06/2001	NAFTA–4,985	
Thos. Iseri Produce (Co.)	Ontario, OR	06/13/2001	NAFTA–4,986	Produce.
Tennessee Machine and Hosiery (Co.)	Danridge, TN	06/15/2001	NAFTA–4,987	Men's and boy's athletic socks.
California Cedar Products (Co.)	Roseburg, OR	06/11/2001	NAFTA–4,988	Commerical lumber.
Master Products Mfg. (Wkrs)	Los Angeles, CA	06/13/2001	NAFTA–4,989	Paper punches.
Mayflower Manufacturing (UNITE)	Old Forge, PA	06/14/2001	NAFTA–4,990	Men's, boy's dress & casual slacks.
Triple A Trouser (UNITE)	Scranton, PA	06/14/2001	NAFTA–4,991	Men's and boy's dress & casual slacks.
Teledyne Electronics Technologies (Co.)	Hawthorne, CA	06/13/2001	NAFTA–4,992	Electro mechanical relays.
Allegheny Ludlum Steel (Co.)	Pittsburgh, PA	06/19/2001	NAFTA–4,993	Cold rolled grain oriented electrical.
Invensys Systems (Co.)	Foxboro, MA	06/15/2001	NAFTA–4,994	Printed circuit board.
Elder Manufacturing (UNITE)	Dexter, MO	06/19/2001	NAFTA–4,995	Parochial school uniforms.
Honeywell (Wkrs)	St. Louis Park, MN	05/02/2001	NAFTA–4,996	Circuits.
American Apparel (Wkrs)	Lena, MS	06/12/2001	NAFTA–4,997	Garments.
BASF Corporation (Co.)	Rensselaer, NY	06/11/2001	NAFTA–4,998	Organic chemical dyes.
Pete's Cutting Services 807 (Wkrs)	Hialeal, FL	06/12/2001	NAFTA–4,999	Clothing.
Weyerhaeuser (AWPPW)	Springfield, OR	06/12/2001	NAFTA–5,000	Paper.
Louisiana Pacific (Wkrs)	Rogue River, OR	06/18/2001	NAFTA–5,001	Veneer.
Redwing Shoes (Wkrs)	Danville, KY	06/18/2001	NAFTA–5,002	Leather shoes.
FCI Electronics (Wkrs)	Mt. Union, PA	06/18/2001	NAFTA–5,003	Components for computers.
DeLong Sportwear (Wkrs)	Jefferson, OR	06/19/2001	NAFTA–5,004	Textiles—wool cloth.
California Manufacturing (UNITE)	St. Louis, MO	06/19/2001	NAFTA–5,005	Light winter jackets.

APPENDIX—Continued

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Weyerhaeuser (WPPW)	Longview, WA	06/19/2001	NAFTA–5,006	Uncoated free sheet paper rolls.
Sola Optical (Co.)	Petaluma, CA	06/18/2001	NAFTA–5,007	Optical lens for prescription eyewear.
Tyco Electronics (Wkrs)	Menlo Park, CA	06/15/2001	NAFTA–5,008	Passive fiber optic.
Quaker Oats Company (The) (RWDSU)	St. Joseph, MO	06/19/2001	NAFTA–5,009	Oatmeal, instant grits, pancake mix.
ADC Mersum US (Co.)	South Hackensack, NJ.	06/19/2001	NAFTA–5,0010	Remote access for telecom.
Plystar (Wkrs)	Columbia, GA	06/19/2001	NAFTA–5,011	Vacuum seal bags.
Trans Apparel Group (UNITE)	Michigan City, IN	06/18/2001	NAFTA–5,012	Men's slacks.
Outboard Marine (Wkrs)	Delawan, WI	06/20/2001	NAFTA–5,013	Electronic circuit boards.
Thomaston Mills (Co.)	Thomaston, GA	06/20/2001	NAFTA–5,014	Sheets, pillowcases and comforters.
Phantom—Glendale (Wkrs)	Wilkesboro, NC	06/25/2001	NAFTA–5,015	Ladies intimate apparel.
Sagebrush (Wkrs)	Caledonia, MN	06/18/2001	NAFTA–5,016	Technical support of software.
TRW Automotive (UAW)	Milford, MI	06/21/2001	NAFTA–5,017	ABS proportionine valve.
Michigan Rivet (Wkrs)	Petoskey, MI	06/25/2001	NAFTA–5,018	Internally threaded fasteners.
Rivers West Apparel (Wkrs)	Manti, UT	06/25/2001	NAFTA–5,019	Apparel.
D'Clase Cutting Service (Wkrs)	Medley, FL	06/19/2001	NAFTA–5,020	Fabrics & pieces of pants.
Rich Products (Wkrs)	Winchester, VA	06/25/2001	NAFTA–5,021	Breads and rolls.
3M, Inc. (Wkrs)	Columbia, MO	06/25/2001	NAFTA–5,022	Flexable printers.
Magnolia International (Wkrs)	Harlingen, TX	06/26/2001	NAFTA–5,023	Cutting industrial wear
Visteon Systems (IUE/C)	Connersville, IN	06/22/2001	NAFTA–5,024	Radiators, compressors etc.
Coleman Cable (Wkrs)	McAllen, TX	06/25/2001	NAFTA–5,025	Power supply cords.
Textron Fastening Systems—Townsend (Co.).	Spencer, TN	06/25/2001	NAFTA–5,026	Metal fasteners.
Lear Corporation (Co.)	Romulus, MI	07/03/2001	NAFTA–5,027	Automobile seats.
Parker Hannifin (USWA)	Gashen, IN	07/02/2001	NAFTA–5,028	Rubber.
Winona, Inc. (Wkrs)	Winona, MN	06/06/2001	NAFTA–5,029	Sweaters.
Ross Allen Design (Wkrs)	Bean Station, TN	06/28/2001	NAFTA–5,030	Designs.
Cordis (Co.)	Miami Lakes, FL	06/29/2001	NAFTA–5,031	
National Textiles (Co.).	Gaffney, SC	06/27/2001	NAFTA–5,032	Active wear apparel products.
Blue Ridge Textiles Printers (Co.)	Statesville, NC	06/26/2001	NAFTA–5,033	Textile printing sheeting.
General Electric (IUE–C)	Fort Wayne, IN	06/25/2001	NAFTA–5,034	Permanent magnetic and AC motors.
Excel Group (Co.)	Murray, KY	06/27/2001	NAFTA–5,035	Mattel toys.
Andrew Corp.—RF Subsystems Group (Co.).	Orland Park, IL	06/27/2001	NAFTA–5,036	Coax cable assemblies.
Percision Mold (Co.)	Kent, WA	06/27/2001	NAFTA–5,037	Plastic injection.
MuRata Electronics North America (Wkrs)	State College, PA	06/27/2001	NAFTA–5,038	Microwave filters.
Louisiana Pacific (Wkrs)	Roeue River, OR	06/22/2001	NAFTA–5,039	Veneer.
Sheldahl (Wkrs)	Britton, SD	06/27/2001	NAFTA–5,040	Flexible circuit assembly.
Seagate Technology (Co.)	Oklahoma City, OK	06/28/2001	NAFTA–5,041	Refurbishment operations.
Exide Technologies (UAW)	Burlington, IA	06/28/2001	NAFTA–5,042	Automotive batteries.
Cooper Wiring Devices (USWA)	Georgetown, SC	06/29/2001	NAFTA–5,043	Wall plugs, light switches etc.

[FR Doc. 01–18153 Filed 7–19–01; 8:45 am]
BILLING CODE 4510–30–M

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 extension of the Application for Continuation of Death Benefits for Student (LS–266).

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 18, 2001.

ADDRESSES: Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act. The Act provides for continuation of death benefits for a child or certain other surviving dependents after the age of 18 (to age 23) if the dependent qualifies as a student as defined in Section 2 (18) of the Act. Regulation 20 CFR 702.121 addresses the use of forms for the reporting of required information. The LS–266 is to be submitted by the parent or guardian of the dependent for whom continuation of benefits is sought. The statements contained on the form must be verified by an official of the educational institution. The information

is used by the Department of Labor to determine whether a continuation of the benefits is justified.

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 the approval of the extension of this information collection in order to ensure that eligible dependents may continue to receive benefits to which they are entitled.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for Continuation of Death Benefits for Student.

OMB Number: 1215–0073.

Agency Number: LS–266.

Affected Public: Individuals or households; Businesses or other for-profit.

Frequency: On occasion.

Total Respondents: 43.

Time per Response: 30 minutes.

Estimated Total Burden Hours: 22.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $15.91.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management andBudget approval of the information collection request; they will also become a matter of public record.

Dated: July 11, 2001.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and PlanningEmployment Standards Administration.

[FR Doc. 01–18149 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–CF–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 Part1, 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 be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as 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 Act,'' shall be the minimum paid by constructors 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 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

Connecticut
CT010001 (Mar. 02, 2001)
CT010003 (Mar. 02, 2001)
CT10004 (Mar. 02, 2001)
New York
NY010013 (Mar. 02, 2001)

Volume II

None

Volume III

Georgia
GA010004 (Mar. 02, 2001)
GA010006 (Mar. 02, 2001)

GA010022 (Mar. 02, 2001)
GA010033 (Mar. 02, 2001)
GA010073 (Mar. 02, 2001)
GA010086 (Mar. 02, 2001)
GA010087 (Mar. 02, 2001)
GA010088 (Mar. 02, 2001)

Volume IV

Michigan
MI010001 (Mar. 02, 2001)
MI010002 (Mar. 02, 2001)
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MI010007 (Mar. 02, 2001)
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MI010011 (Mar. 02, 2001)
MI010012 (Mar. 02, 2001)
MI010013 (Mar. 02, 2001)
MI010015 (Mar. 02, 2001)
MI010016 (Mar. 02, 2001)
MI010017 (Mar. 02, 2001)
MI010019 (Mar. 02, 2001)
MI010020 (Mar. 02, 2001)
Minnesota
MN010001 (Mar. 02, 2001)
MN010003 (Mar. 02, 2001)
MN010004 (Mar. 02, 2001)
MN010005 (Mar. 02, 2001)
MN010013 (Mar. 02, 2001)
MN010015 (Mar. 02, 2001)
MN010017 (Mar. 02, 2001)
MN010043 (Mar. 02, 2001)
MN010048 (Mar. 02, 2001)
MN010049 (Mar. 02, 2001)
MN010051 (Mar. 02, 2001)
MN010053 (Mar. 02, 2001)
MN010054 (Mar. 02, 2001)
MN010055 (Mar. 02, 2001)
MN010056 (Mar. 02, 2001)
MN010057 (Mar. 02, 2001)
MN010059 (Mar. 02, 2001)
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MO010039 (Mar. 02, 2001)
MO010042 (Mar. 02, 2001)
MO010045 (Mar. 02, 2001)
MO010054 (Mar. 02, 2001)
MO010058 (Mar. 02, 2001)
Nebraska
NE010001 (Mar. 02, 2001)
NE010003 (Mar. 02, 2001)
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NE010011 (Mar. 02, 2001)
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Volume VI

Colorado
CO010001 (Mar. 02, 2001)
CO010005 (Mar. 02, 2001)
CO010006 (Mar. 02, 2001)
CO010007 (Mar. 02, 2001)
CO010008 (Mar. 02, 2001)
CO010009 (Mar. 02, 2001)
CO010016 (Mar. 02, 2001)
CO010021 (Mar. 02, 2001)
CO010022 (Mar. 02, 2001)
CO010023 (Mar. 02, 2001)
CO010024 (Mar. 02, 2001)
CO010025 (Mar. 02, 2001)

Volume VII

None

General Wage Determination Publication

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 12th day of July, 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–17903 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Safety Standards for Underground Coal Mine Ventilation

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperowrk 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.

DATES: Submit comments on or before September 18, 2001.

ADDRESSES: Send comments to Lynnette M. Haywood, Deputy Director, Administration and Management 4015 Wilson Boulevard, Room 611, 4015, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to lhaywood@msha.gov, along with an original printed copy. Ms. Haywood can be reached at (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Lynette M. Haywood, Deputy Director, Administration and Management, U.S. Department of Labor, Mine Safety and Health Administration, Room 611, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Haywood can be reached at lhaywood@msha.gov (Internet E-mail), (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The preshift examination is the mine operator's fundamental tool for assessing the overall safety condition of the mine. During the examination, the examiner focuses on discovering both existing and developing hazards, such as methane accumulation, bad roof and water accumulation, and determining the effectiveness of the mine ventilation system. The examination has proven to be particularly effective in the discovery and correction of hazardous conditions

and practices before they lead to injuries or fatalities. Because conditions in the underground mining environment can change rapidly, recurring examinations are necessary to assure safety of the miners underground. A timely preshift examination assures the safety of the environment on a routine basis.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the Safety Standards for Underground Coal Mine Ventilation. MSHA 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.

A copy of the information collection request may be viewed on he Internet by accessing the MSHA Home Page (*http://www.msha.gov)* and selecting ''Statutory and Regulatory Information then ''Paperwork Reduction Act Submissions'' (*http://www.msha.gov/regspwork.htm*)'', or by contacting the employee listed above in the For Further Information Contact section of this notice for a hard copy.

III. Current Actions

An underground mine is a maze of tunnels that must be adequately ventilated with fresh air to provide a safe environment for miners. Methane is liberated from the strata, and anxious gases and dusts from blasting and other mining activities may be present. The explosive and noxious gases and dusts must be diluted, rendered harmless, and carried to the surface by the ventilating currents. Sufficient air quality must be provided to maintain the level of respirable dust in accordance with MSHA standards.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Safety Standard for Underground Coal Mine Ventilation.

OMB Number: 1219–0125.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Cite/Reference/Form/etc: 30 CFR 75.360(a)(1), and 75.360(f).

Total Respondents: 127.

Total Responses: 102,000.

Average Time per Response: 46 minutes*.

Estimated Total Burden Hours: 78,001. *Discrepancies due to rounding.

Total Annualized Capital/Startup Costs: $0.

Total Operating and Maintenance Costs: $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: July 16, 2001.

Lynnette M. Haywood,

Deputy Director, Administration and Management.

[FR Doc. 01–18154 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–2001]

TUV Product Services GmbH, Recognition as an NRTL

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of TUV Product Services GmbH for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on July 20, 2001, and will be valid until July 20, 2006, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of TUV Product Services GmbH (TUVPSG) as a Nationally Recognized Testing Laboratory (NRTL). The scope of this recognition includes testing and certification of the equipment or materials, and the site, listed below. The recognition also includes TUVPSG's use of the supplemental programs described below. OSHA will detail TUVPSG's scope of recognition in an informational web page for the NRTL, which we will establish at (*http://www.osha-slc.gov/dts/otpca/nrtl/index.html*). We maintain such a web page for each NRTL.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansions or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope.

TUVPSG applied for recognition as an NRTL, pursuant to 29 CFR 1910.7, and OSHA published the required notice in the **Federal Register** on March 16, 2001 (66 FR 15291) to announce the application. The notice included a preliminary finding that TUVPSG could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by April 16, 2001. OSHA received one comment in response to the notice (see Exhibit 4–1).

The commenter did not support or oppose the application but requested certain documentation that the applicant has designated as confidential and requested an extension of the time to comment in order to review this documentation. Due to the designation

by the applicant, OSHA did not make these documents available for public review. The commenter said it sought to obtain these documents ''to provide meaningful comment as to whether the NRTL meets the requirements of 29 CFR 1910.7.'' The commenter believes some of the documents withheld are ''industry common procedures.''

We follow provisions of 29 CFR Part 70 in determining whether we can or must disclose application information. This part generally deals with procedures to process a request for disclosure under the Freedom of Information Act (FOIA). Under Subpart B of this Part 70, information designated as confidential by a business submitter may be afforded protection under Exemption 4 of the FOIA. This exemption protects commercial or financial information, the disclosure of which would cause substantial competitive harm to the submitter. As part of our normal process for handling applications, OSHA requested that the applicant provide reasons for designating certain application documents as confidential, and specifically whether disclosure would cause it substantial competitive harm. In its original submission (see Exhibit 2–2), the applicant had marked virtually all of its documents ''Confidential.'' The applicant provided the necessary justification (see Exhibit 2–3), and OSHA reviewed it and the applicable documents and determined that their disclosure could reasonably be expected to cause the applicant substantial competitive harm. Therefore, we did not make certain documents available for public review. These documents are detailed internal procedures that explain more specifically how the applicant will operate and could potentially give to prospective or current competitors knowledge that could cause the applicant substantial competitive harm. OSHA has previously withheld from disclosure similar such documents in response to FOIA requests received concerning documents submitted by other NRTLs.

Based on TUVPSG's justification, we also are unable to disclose the documents to the commenter. Since we cannot disclose this information and the commenter bases its request for extension to comment upon a review of this information, we denied the request for extension. The application information that we have made public, the on-site review report, both available in our docket office, and the information we provided in the preliminary notice, and repeat in this current notice, adequately demonstrate that the applicant meets the requirements for recognition, subject to the conditions included in that notice. OSHA has responded to the commenter to explain the denial of the extension and to address the remainder of its comment.

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, D.C. 20210. You should refer to Docket No. NRTL1–2001, the permanent record of public information on the TUVPSG recognition. Please note that in the preliminary notice we incorrectly referred to the docket number as NRTL–1–01.

The current address of the facility (site) that OSHA recognizes for TUVPSG is: TUV Product Services GmbH, Ridlerstrasse 65, D–80339, Munich, Germany.

Background on the Applicant and the Application

According to the application, TUV Product Services GmbH (TUVPSG) is a limited liability company founded under German law in 1988. TUVPSG states that it is an ''international organization for testing, evaluation, and certification of products and management systems.'' Also, the applicant states that it traces its origins to German steam boiler inspection associations formed as early as 1866 ''to protect workers against injury and to prevent damage to industrial installations.'' TUVPSG owns and operates a number of laboratories in Germany and in many other countries, including the U.S. However, the recognition applies only to the one location listed above.

The regulations for the NRTL Program in 29 CFR 1910.7 allow any testing organization, whether or not it is US-based, to apply to OSHA for recognition as an NRTL. However, in determining eligibility for a foreign-based testing organization, such as TUVPSG, the regulations require OSHA to take into consideration reciprocal treatment by the foreign government of certain US-based testing agencies. Germany is part of the European Union (EU), and the US and the EU have signed a Mutual Recognition Agreement (MRA) on conformity assessment, which went into effect in May 1999. The MRA includes provisions for the reciprocal treatment of US-based testing agencies by governments of countries that are part of the EU. As a result of the MRA, reciprocity is assumed for all countries in the EU, and OSHA does not have to go through a country-by-country determination. The MRA does not change any of the requirements or processes that OSHA follows under its NRTL Program. For more information on the MRA, refer to the U.S. Department of Commerce web site (http://www.doc.gov)

In the application, TUVPSG states that it is owned by TUV Suddeutschland and TUV Nord, both based in Germany. However, recently TUV Suddeutschland (TUVS) became sole owner of TUVPSG. Organizationally, the applicant falls within the ''Product Division'' of TUVS, one of its three main divisions. TUVS in general provides testing and other technical services in a number of areas throughout the world.

TUVPSG submitted an application for recognition, dated August 21, 1998 (see Exhibit 2–1). OSHA received this application from the European Commission (EC) on March 1, 1999, along with applications from other organizations located in the EU. The EC submitted the applications under the provisions of the Electrical Safety Annex of the MRA. However, none of these applications contained sufficient information for processing, and OSHA returned them to the Commission in April 1999 to obtain the additional information.

The Commission resubmitted the application for TUVPSG to OSHA, which the Agency received on March 3, 2000 (see Exhibit 2–2). This application includes the substantive portion originally submitted and is therefore dated August 21, 1998. In the application, TUVPSG requested recognition for four test standards, originally specifying international test standards but, to meet OSHA requirements, later specifying the equivalent US test standards. Some of the documents in the application needed translations, which were received on June 5, 2000 (see Exhibit 2–6). In response to requests from OSHA for clarification and additional information, TUVPSG supplemented its application in submissions dated August 11 and August 28, 2000 (see Exhibits 2–3 and 2–4). It also supplemented its application in a submission dated November 8, 2000 (see Exhibit 2–5), which included a request for recognition of 34 additional test standards, bringing the total standards requested for recognition to 38.

As explained above and in the preliminary notice, some documents in the submissions, and parts of the original application, have been designated as ''confidential'' by the applicant. Generally, the applicant

maintains the 4 levels of operational documentation mentioned in international quality standards. It generally considers its level 3 and 4 documents to be confidential or privileged.

Staff of the NRTL Program performed an on-site review (assessment) of the Munich, Germany, facility on September 18–22, 2000. In the on-site review report (see Exhibit 3), the program staff recommended a ''positive finding.''

The applicant has presented detailed documentation that describes how it currently performs its testing and certification activities. Many of the policies, procedures, work instructions, methods, and other practices described in this documentation would be used in its operations as an NRTL. Where appropriate, it has supplemented or modified the policies and procedures to conform to OSHA's requirements for an NRTL under 29 CFR 1910.7.

TUVPSG currently performs a large range of product testing and certification activities, primarily testing to European based testing standards, such as EN and IEC standards. For example, it currently performs testing required under EN 60950, and has provisions for addressing national deviations adopted by various countries, including those for the US. One of the test standards for which it requests recognition is UL 1950, which is equivalent to EN60950 but includes the US deviations. TUVPSG performs its testing and certification activities primarily to assure compliance of products to requirements under directives issued within the European Union. However, it has also performed testing to US based test standards, such as UL 1950. As part of its current certification activities, it conducts initial and follow-up inspections at manufacturers' facilities, one facet of the activities that NRTLs recognized by OSHA must perform. It also authorizes the use of certification marks, another aspect of the work that NRTLs must perform. However, the marks it authorizes are primarily necessary for the European marketplace. For purposes of its certification under OSHA's NRTL Program, TUVPSG will utilize a US registered certification mark that is owned by its subsidiary in the US.

The four recognition requirements of 29 CFR 1910.7 are presented below, along with an explanation illustrating how TUVPSG has met or plans to meet each of these requirements.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The application and on-site review report indicate that TUVPSG has adequate testing equipment and an adequate facility to perform the tests required under the test standards for which it seeks recognition. Security measures are in place to restrict or control access to their facility, and procedures exist for handling test samples. The report also indicates that testing and processing procedures are in place, and the application describes the program for the development of new testing procedures. The applicant submitted 24 specific test methods that it currently uses and would utilize for its proposed NRTL testing activities. For some of the test standards, it will develop testing report formats prior to performing testing and certification of products under the specific standard.

TUVPSG utilizes outside calibration sources and also has procedures for and performs internal calibrations of certain equipment. The application indicates that TUVPSG maintains records on testing equipment, which include information on repair, routine maintenance, and calibrations. The application and on-site review report address personnel qualifications and training, and identify the applicant's staff involved with product testing, along with a summary of their education and experience. Also, the report indicates that TUVPSG personnel have adequate technical knowledge for the work they perform. Moreover, the review report describes the applicant's quality assurance program, which is explained in more detail in TUVPSG's Quality Manual. Finally, the applicant performs internal system and internal technical audits of its operations on a regular basis.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The applicant has procedures and related documentation for initially qualifying a manufacturer and for performing the required follow-up inspections at a manufacturer's facility. In its procedures, it identifies criteria it will use to determine the frequency with which it will perform these follow-up factory inspections. It has adopted the criteria detailed in OSHA policies for NRTLs, which specify that NRTLs perform no fewer than four (4) inspections per year at certain facilities and no fewer than two (2) inspections per year under certain conditions. The factory inspections are one part of the activities that the applicant will utilize in controlling its certification mark. In its application, TUVPSG included evidence of the application by its American subsidiary for registration of a TUV certification mark with the U.S. Patent and Trademark Office (USPTO).

The applicant currently performs product certifications, as previously mentioned, and has procedures for control and issuance of these certifications. According to the review report, it has issued in excess of 25,000 certifications under these procedures. The applicant maintains a detailed database of the product certifications, which would serve as its listing record. The report also states that the applicant has experience in authorizing and controlling the use of a certification mark, following many of the procedures and methods it uses for control of its certification certificates. For purposes of OSHA's NRTL Program, control by the NRTL of its certification mark is uppermost in importance. TUVPSG's control of a US registered certification mark under the NRTL Program will be a new activity for the applicant, and OSHA includes a condition related to this control.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

As previously stated, TUV Suddeutschland (TUVS) is currently the sole owner of TUVPSG. In addition, the information reviewed by OSHA has not indicated that TUVPSG has the kinds of relationships described in OSHA policy that would cause the applicant to fail to meet the independence requirement. This information shows that TUVPSG does not own or control and is not owned or controlled by the kind of entities of concern to OSHA. In addition, OSHA's review of information

on business activities and subsidiaries of the TUVPSG's parent company has not revealed any apparent conflicts of interest that could adversely influence the applicant's testing and certification activities. TUVPSG has policies to protect against conflicts of interest by its employees.

Credible Reports/Complaint Handling

Section 1910.7(b)(4) provides that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

The applicant utilizes standardized formats for recording and reporting testing data and inspection data. It has procedures for evaluating and reporting the findings for testing and inspection activities to check conformance to all requirements of a test standard. The applicant has included examples of completed inspection forms.

Regarding the handling of complaints and disputes, the applicant's complaint management procedure provides the framework to handle complaints it receives from its clients or from the public or other interested parties. According to the review report, under one certification system operated by the applicant, it must respond to an initial complaint within 24 hours. OSHA has no such requirements for NRTLs, but the review report indicates that the applicant will utilize its current form of system controls and documentation to handle complaints stemming from its NRTL certification activities.

Programs and Procedures

OSHA is granting the request by TUVPSG to use the supplemental programs listed below, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which (called supplemental programs) an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition always includes the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. The on-site review report indicates that TUVPSG appears to meet the criteria for use of the following supplemental programs for which it has applied:

Program 2: Acceptance of testing data from independent organizations, other than NRTLs
Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs
Program 4: Acceptance of witnessed testing data
Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme
Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

TUVPSG also sought recognition for the three remaining supplemental programs, but OSHA is not granting recognition for these programs at this time. Under these programs, an NRTL may use manufacturers' data in performing the testing and evaluation activities required for a test standard. However, as noted in the review report, the manufacturers for which TUVPSG performs testing could lack sufficient familiarity with testing to the US deviations. As stated in the report, TUVPSG may reapply for the 3 programs ''in a few years when [the] manufacturers have participated'' in the witnessed testing program, and it is familiar with their ''testing capability and confidence in their ability to test US deviations, with respect to products destined for the US marketplace.''

Additional Conditions

As already indicated, TUVPSG plans to utilize the proprietary US-registered mark of its US subsidiary in certifying products as an NRTL. This is a new undertaking for the applicant and although it has procedures for controlling a certification mark, it still needs to further develop and refine the detailed procedures it will use to control this particular mark. As a result, OSHA conditionally recognizes TUVPSG subject to an assessment of the detailed procedures and practices for controlling this mark once they are in place.

TUVPSG may use only the US registered mark for its NRTL certification activities. At the time of preparation of this current notice, the U.S. Patent and Trademark Office (USPTO) had not yet issued the Notice of Allowance for the mark. This notice must be issued before OSHA will place the mark on its web page that shows the marks used by NRTLs (*http://www.osha-slc.gov/dts/otpca/nrtl/nrtlmrk.html*). In addition, only the site listed in this notice may authorize use of this mark. Since this mark is specific to the NRTL Program, the US subsidiary may not authorize use of the mark unless it is recognized as an NRTL. Similarly, none of the other TUVPSG laboratories or locations may authorize the use of this mark. To ensure the applicant and the public understand this fact, OSHA imposes a condition to this effect.

As also noted, the applicant has just adopted procedures concerning the criteria for determining its frequency for conducting factory follow-up inspections. Here, too, it needs more detailed procedures to effectively and properly implement the criteria. OSHA would have to review TUVPSG's approach in implementing the criteria for twice per year inspections before it begins to conduct inspections at this frequency. As a result, OSHA conditionally recognizes TUVPSG subject to an assessment of the details of this approach once it is in place.

Imposing the conditions is consistent with OSHA's past recognition of certain organizations as NRTLs, which met the basic requirements but needed to further develop or refine their procedures (for example, see 63 FR 68306 12/10/1998; and 65 FR 26637, 05/08/2000). Given the applicant's current breadth of activities in testing and certification, OSHA is confident that TUVPSG will develop and implement procedures and practices to appropriately perform the activities in the areas noted above.

Therefore, OSHA includes appropriate conditions below that TUVPSG must meet for recognition as an NRTL. These conditions apply solely to the TUVPSG operations as an NRTL and solely to those products that it certifies for purposes of enabling employers to meet OSHA product approval requirements. These conditions, listed first under *Conditions* below, apply in addition to the other conditions below that OSHA normally imposes in its recognition of an organization as an NRTL. The NRTL Program staff includes these type of additional conditions on OSHA's informational web page for the NRTL, which we will establish under our web site at http://www.osha-slc.gov/dts/otpca/nrtl/index.html. When the staff determine that a particular condition has been satisfied, not only for TUVPSG but for any NRTL, they will remove the condition from the web page and notify

the NRTL accordingly. OSHA is not required to publish a public notice to remove conditions it imposes as part of its NRTL recognition activities.

Final Decision and Order

The NRTL Program staff has examined the application, the additional submissions, the on-site review report, and other pertinent documents. Based upon this examination and the program staff recommendation, OSHA finds that TUV Product Services GmbH has met the requirements of 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory. The recognition applies to the site listed above. In addition, it covers the test standards, listed below, and it is subject to the limitations and conditions, also listed below.

Limitations

OSHA hereby limits the recognition of TUVPSG to testing and certification of products for demonstration of conformance to the test standards listed below (see Listing of Test Standards). OSHA has determined that each test standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

The Agency's recognition of TUVPSG, or any other NRTL, for a particular test standard is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. Conversely, OSHA's recognition of an NRTL for a test standard excludes the testing of any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

Listing of Test Standards

UL 82 Electric Gardening Appliances
UL 122 Photographic Equipment
UL 507 Electric Fans
UL 508 Industrial Control Equipment
UL 561 Floor Finishing Machines
UL 745–1 Portable Electric Tools
UL 745–2–1 Particular Requirements of Drills
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
UL 745–2–4 Particular Requirements for Sanders
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
UL 745–2–6 Particular Requirements for Hammers
UL 745–2–8 Particular Requirements for Shears and Nibblers
UL 745–2–9 Particular Requirements for Tappers
UL 745–2–11 Particular Requirements for Reciprocating Saws
UL 745–2–12 Particular Requirements for Concrete Vibrators
UL 745–2–14 Particular Requirements for Planers
UL 745–2–17 Particular Requirements for Routers and Trimmers
UL 745–2–30 Particular Requirements for Staplers
UL 745–2–31 Particular Requirements for Diamond Core Drills
UL 745–2–32 Particular Requirements for Magnetic Drill Presses
UL 745–2–33 Particular Requirements for Portable Bandsaws
UL 745–2–34 Particular Requirements for Strapping Tools
UL 745–2–35 Particular Requirements for Drain Cleaners
UL 745–2–36 Particular Requirements for Hand Motor Tools
UL 745–2–37 Particular Requirements for Plate Jointers
UL 775 Graphic Arts Equipment
UL 778 Motor-Operated Water Pumps
UL 987 Stationary and Fixed Electric Tools
UL 1017 Vacuum Cleaners, Blower Cleaners, and Household Floor Finishing Machines
UL 1419 Professional Video and Audio Equipment
UL 1459 Telephone Equipment
UL 1585 Class 2 and Class 3 Transformers
UL 1776 High-Pressure Cleaning Machines
UL 1950 Technology Equipment Including Electrical Business Equipment
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment, Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

The designations and titles of the above test standards were current at the time of the preparation of the preliminary notice.

Many of the test standards listed above are also approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we show the designation of the standards developing organization (e.g., UL 1950) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1950). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI web site (http://www.ansi.org) and click ''NSSN'' to find out whether or not a test standard is currently ANSI-approved.

Conditions

TUV Product Services GmbH must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Within 30 days of certifying its first products under the NRTL Program, TUVPSG will notify the OSHA NRTL Program Director so that OSHA may review TUVPSG's implementation of its procedures for controlling the US registered certification mark of its US subsidiary, TUV Product Services, Inc., based in Danvers, Massachusetts;

Only TUV Product Services GmbH (TUVPSG) may authorize the US registered certification mark currently owned by its US subsidiary, TUV Product Services, Inc., based in Danvers, Massachusetts. TUVPSG may authorize the use of this mark only at the facility recognized by OSHA;

Prior to conducting inspections of manufacturing facilities based on a frequency of twice per year, OSHA must review and accept the detailed procedures that TUVPSG will utilize to determine when to use this frequency for such inspections;

OSHA must be allowed access to TUVPSG's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If TUVPSG has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

TUVPSG must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUVPSG agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

TUVPSG must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel,

and of any major changes in its operations as an NRTL, including details;

TUVPSG will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

TUVPSG will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC this 10th day of July, 2001.

R. Davis Layne,

Acting Assistant Secretary.

[FR Doc. 01–18148 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–26–P

MERIT SYSTEMS PROTECTION BOARD

Membership of the Merit Systems Protection Board's Senior Executive Service Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATES: July 20, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Nicholson, Personnel Officer, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is publishing the names of the new and current members of the Performance Review Board (PRB) as required by 5 U.S.C. 4314(c)(4). Clyde B. Blandford, Jr. has been appointed as a new member. Lonnie L. Crawford will continue to serve as Chairman. John Palguta, Robert Lawshe, and John Seal will continue to serve as members of the PRB.

Dated: July 17, 2001.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 01–18210 Filed 7–19–01; 8:45 am]

BILLING CODE 7400–01–M

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Proposed Collection, Comment Request, Study of User Needs Assessment in Digitization

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burdens, 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. 3508(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 Institute of Museum and Library Services is soliciting comments concerning the proposed study of the needs assessment of end-users in library and museum digitization projects funded through the Institute of Museum and Library Services.

A copy of the proposed information collection request can be obtained by contacting the individual 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 September 18, 2001.

IMLS is particularly interested in comments that help the agency to:

- 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 collocation 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.

ADDRESSES: Send comments to: Barbara Smith, Technology Officer, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Ms. Smith can be reached on Telephone: 202–606–5254, Fax: 202–606–1077 or by e-mail at bsmith@imls.gov

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services act, Public Law 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

Agency: Institute of Museum and Library Services.

Title: Study of User Needs Assessment in Digitization.

OMB Number n/a.

Agency Number: 3137.

Frequency: One time.

Affected Public: Museums and libraries.

Number of Respondents: 250.

Estimated Time Per Respondent: 45 minutes.

Total Burden Hours: 187.5 hours.

Total Annualized capital/startup costs: Zero.

Total Annual costs: $3,138.75.

Contact: Mamie Bittner, Director office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW Washington, DC 20506, telephone (202) 606–4648.

Dated: July 16, 2001.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 01–18143 Filed 7–19–01; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Correction

On April 23, 2001, exemptions to 10 CFR part 50, Appendix G were published related to the Vermont Yankee Nuclear Power Station (66 FR 20486). The words ''material heat 76492'' on page 20487, column 1 on line 3 should be corrected to read ''material heat C–3017–2''

Dated at Rockville, Maryland, this 2nd day of July 2001.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–18173 Filed 7–19–01; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3073]

Environmental Assessment and Finding of No Significant Impact Related to Amendment No. 13 to Material License No. SNM–1999 Release of Portion of Site for Unrestricted Use Kerr-McGee Corporation Cushing Refinery Site

1. Introduction

1.1 Background

The U.S. Nuclear Regulatory Commission (NRC) is considering the Kerr-McGee Corporation's (Kerr-McGee or the licensee) request to have a portion of the property released, for unrestricted use, from the Cushing Refinery Site (Cushing) License, SNM–1999. This action is taken in response to Kerr-McGee's license amendment request, dated November 10, 2000, and supplemented by letter dated January 19, 2001, to release the portions of site blocks 116, 117, 124, and 125 that are south of Skull Creek for unrestricted use and to remove the areas from the license. The proposed boundary of the licensed area is shown in Figure 1, ''Cushing, Oklahoma Refinery Site, Proposed Licensed Site,'' of the January 19, 2001, letter.

On April 6, 1993, NRC issued Materials License SNM–1999 authorizing possession of contaminated soil, sludge, sediment, trash, building rubble, and any other contaminated material, at the licensee's Cushing site. On March 26, 1999, NRC by license amendment released for unrestricted use and removed from the Cushing license Unaffected Area 1, portions of Unaffected Areas 2—4 that are south of Skull Creek, and a portion of the haul road corridor area partially surrounded by Unaffected Areas 2—4. These areas were used for oil refining and storage during the years that nuclear processing and disposal took place and were not to be affected by the nuclear processing or disposal. On August 23, 1999, NRC approved Kerr-McGee's Cushing Refinery Site Decommissioning Plan by license amendment. As part of that approval NRC performed an environmental assessment of the activities necessary to remediate the Cushing site to meet NRC's unrestricted use criteria. As noted in that environmental assessment, NRC concluded that those activities would not adversely affect the environment. That Environmental Assessment, including a Finding of No Significant Impact, was published in the **Federal Register** on April 1, 1999.[1]

The licensee now requests that other portions of the Cushing site be released for unrestricted use and removed from the Cushing license as those areas can be demonstrated to meet NRC's criteria for release for unrestricted release. Kerr-McGee, in its letter dated November 10, 2000, and supplemented by letter dated January 19, 2001, has requested that portions of site blocks 116, 117, 124, and 125 that are south of Skull Creek be released for unrestricted use and to remove this area from its license. The area that is being considered for release from the license encompasses a sediment pond located in Unaffected Area 2 (UA–2). This sediment pond is normally used as a collection area for sediments generated during treatment of water removed from Pit 5. A routine discharge of treated wastewater to Skull Creek in June 1998 resulted in the inadvertent release of some of the pond sediment not releasable under the licensee's discharge permit. Although Skull Creek was radiologically decontaminated in 1991, it is located within a radiologically affected area. Therefore, sediments removed from Skull Creek and placed into UA–2 Sediment Pond had a potential of containing licensed material.

1.2 Proposed Action

The proposed action is the release for unrestricted use, and the removal from License SNM–1999, the portions of site blocks 116, 117, 124, and 125 that are south of Skull Creek for unrestricted use and to remove the areas from the license. The proposed boundary of the licensed area is shown in Figure 1, ''Cushing, Oklahoma Refinery Site, Proposed Licensed Site,'' of the January 19, 2001, letter.

1.3 Need for Proposed Action

The licensee seeks to release property that is currently under license for unrestricted use. This action was requested to remove the current limitations on the future use of this portion of the Cushing Refinery Site property.

2. Description of Cushing Refinery Site

2.1 Site Description

The Cushing Refinery site is comprised of 1.78 square kilometers (km^2) (440 acres) in Payne County, Oklahoma. The site is located 3.22 kilometers (km) (2 miles) north of the City of Cushing. The City of Cushing is located about midway between Tulsa and Oklahoma City on Highway 33. Neighboring communities include Yale (11.27 km (7 miles north-northeast)), Ripley (12.88 km (8 miles west-northwest)), Agra (16.1 km (10 miles southwest)), Oilton (17.71 km (11 miles east-northeast)), Quay (16.1 km (10 miles north-northeast)), Jennings (22.54 km (14 miles northeast)), and Drumright (12.88 km (8 miles east)). The Cushing site terrain is rolling pasture land. The elevation of the site ranges from 250 meters (m) (820 feet) to 280 m (920 feet) above mean sea level (MSL). Skull Creek runs through the Cushing site before joining the Cimarron River 6.44 km (4 miles) east-northeast of the site at an elevation of 232 m (760 feet) MSL.

2.2 Site Operating History

The Cushing site was operated as a refinery from approximately 1915 to 1972, when the refinery was closed and dismantled. The licensee operated the refinery site from 1956 to 1972. The licensee also processed nuclear fuel material at the Cushing site from 1963 to 1966, under two AEC licenses. AEC Source Material License SMB–664 authorized Kerr-McGee to possess unlimited quantities of natural uranium, depleted uranium, and thorium. AEC Special Nuclear Material License SNM–695 authorized Kerr-McGee to possess any enrichment of uranium, but limited it to 1,000 kilograms (2,205 pounds) of uranium-235. Kerr-McGee received, possessed, and processed these materials for the AEC. Both AEC licenses were terminated in 1966.

3. Environmental Impact of Proposed Action

An unaffected area, as defined in NUREG/CR–5849, ''Manual for Conducting Radiological Surveys in Support of License Termination,'' is an area not expected to contain residual radioactivity from licensed operations. The unrestricted use criteria for enriched uranium and natural thorium are the Option 1 values in the 1981 Branch Technical Position on ''Disposal or Onsite Storage of Thorium or Uranium Wastes From Past Operations.'' [2] The Option 1 criteria are 30 picoCuries per gram (pCi/g) for natural, depleted, and enriched uranium and 10 pCi/g for natural thorium.

The licensee performed final status surveys in the four unaffected areas and submitted the results to NRC in the ''Final Radiation Survey of Four Unaffected Areas of the Cushing Refinery Site,'' dated April 17, 1995. Gamma radiation scans, gamma exposure rate measurements, soil radioactivity concentration

[1] 64 FR 15831

[2] 46 FR 52061.

measurements, and surface radioactivity survey were performed in each of the four unaffected areas. As a result of the surveys and soil sample analysis, one area of about one meter in diameter on the surface of the ground was found to be contaminated with Th–232. This spot was designated as a radioactive materials area and was removed from the areas that the licensee considered part of the four unaffected areas. The licensee's survey report provided data that indicated that the four unaffected areas meet NRC's criteria for unrestricted use.

The portions of site blocks 116, 117, 124, and 125 that are south of Skull Creek that are being considered for release for unrestricted use were surveyed as part of the four unaffected site areas. The results of the earlier four unaffected areas survey found that concentrations of radionuclides in the soil samples from survey units are as follows: less than 0.1 to 0.5 pCi/g for U–235; 0.3 to 3.0 pCi/g for U–238; 0.6 to 9.0 pCi/g for Th–228; and less than 0.8 to 10.0 pCi/g for Th–232. One small area of thorium, in excess of the criteria (9.0 pCi/g of Th–228 and 10.0 pCi/g of Th–232), is in unaffected area number 2. This area of elevated thorium levels, surveyed by Oak Ridge Institute for Science and Education (ORISE), an independent NRC contractor, is the same area that the licensee designated as a radioactive materials area (about 400 m^2) after it performed its final radiation survey. Thus, this small radioactive material area is not part of the licensee's request for unrestricted release. Of the areas that ORISE surveyed that were part of the licensee's request for unrestricted release, the concentrations of radionuclides in soil samples are as follows: 0.6 to 3.8 pCi/g for Th–228; and less than 0.8 to 3.0 pCi/g for Th–232. The soil samples are within the Option 1 soil criteria for uranium (natural, enriched and depleted) and natural thorium.

The licensee performed a final status survey of the sediment pond and submitted the results to NRC in the ''Final Status Survey Report for Cushing Refinery Site UA–2 Sediment Pond,'' dated May 2, 2000, and supplemented by letters dated November 10, 2000, and January 19, 2001. The results of the exposure rate surveys of the sediment pond indicated that no location was more than 10 micoRoentgen per hour (μR/hr) above background. The soil samples yielded results indicating only background or slightly above background concentrations of uranium and thorium. The maximum concentration of each of the two radionuclides in the soil samples from the sediment pond survey were 10.84 pCi/g for total uranium and 2.72 pCi/g for total thorium. Soil sample concentration results are within the Option 1 criteria for both uranium and thorium. This licensee survey report provided data that indicated that the sediment pond area meets NRC's criteria for unrestricted use.

Groundwater under the Cushing site can be found in one of three water-bearing zones. The water-bearing zones are the shallow water-bearing zone (unconsolidated soil and the upper portion of the Vanoss Group), the lower portion of the Vanoss Group, and Vamoosa-Ada aquifer. The Vamoosa-Ada aquifer is the regional groundwater aquifer. The licensee notes that it appears that there is not a significant groundwater flow between the shallow water-bearing zone and the lower portion of the Vanoss Group. Further the licensee notes that the Vamoosa-Ada aquifer is isolated from the uppermost water-bearing zone by low-permeability strata within the Vanoss. Thus, the Vamoosa-Ada aquifer is unaffected by surface activities. The licensee based this finding on an evaluation of the dispersion of environmental tritium in the aquifer. The State of Oklahoma, Department of Environmental Quality (DEQ) [3] found the following: (1) The shallow groundwater unit yields low quantities of poor quality water; (2) it is highly unlikely that future residential or commercial drinking water wells will be established from the shallow groundwater at this site; and (3) no known drinking water wells are screened in the Vanoss within a one-mile radius of the site. Further, DEQ stated that the Vanoss should not be considered a viable drinking water source for the area and that DEQ would consider water quality standards other than maximum contamination levels as set by the U.S. Environmental Protection Agency (EPA) as appropriate for the shallow groundwater at this site. Further, based on EPA's guidance [4] the Vanoss groundwater would be classified as a Class III—Groundwater Not a Potential Source of Drinking Water and of Limited Beneficial Use.

The staff has reviewed the site potentiometeric surface map of the upper zone.[5] Based on this review the staff determined that: (1) The portions of site grid blocks 116, 117, 124, and 125 are up-gradient of any known sources of contamination; (2) the sediment pond does not contain any radioactive material that exceeds NRC's unrestricted release criteria; and (3) there are no known sources of radioactive contamination up-gradient of this area. Consequently, it is very unlikely that the groundwater in these areas could have been contaminated.

The Other Industrial Waste (OIW) disposal cell is located up-gradient of this area. Material from the remediation of Waste Acid Sludge Pit 4 (Pit 4) that meets NRC's Option 1 criteria for unrestricted release will be disposed of in the OIW. NRC reviewed this disposal activity as part of its review of the Pit 4 remediation plan. On September 3, 1998, NRC approved the Pit 4 remediation plan, License Amendment No. 8.

Based on the above NRC staff finds that because the NRC's unrestricted release criteria have been met for these areas, there is no significant impact on the environment, and this portion of the property can be released for unrestricted use.

4. Alternatives to Proposed Action

The only alternative to the proposed action is to not release this area for unrestricted use and keep the area under license until all site radiological remediation is completed and the Cushing license is terminated. The environmental benefit of maintaining an NRC license for this portion of the Cushing Refinery Site is negligible, but would reduce options for future use of the property.

5. Other Agencies or Persons Consulted

This environmental assessment was prepared entirely by NRC staff. No other sources were used beyond those referenced in this environmental assessment. NRC staff provided a draft of this environmental assessment to DEQ for review. DEQ had no comments or suggestions on this environmental assessment.

6. Conclusions

The NRC finds that because the Commission's unrestricted release criteria have been met, there is no significant impact on the environment, and the property can be released for unrestricted use.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the proposed unrestricted release, and removal from License SNM–1999, of

[3] Letter to Jeff Lux, Kerr McGee Corporation, from Darrell Shults, DEQ, dated September 19, 1997.

[4] ''Guidelines for Ground-Water Classification Under the EPA Ground-Water Protection Strategy'', Final Draft, dated November 1986, Office of Water, EPA.

[5] Figure 2.5, ''Potentiometeric Surface Map of the Upper Zone,'' Kerr-McGee Corporation's Site Decommissioning Plan Cushing, Oklahoma, dated August 1998.

portions of site blocks 116, 117, 124, and 125 that are south of Skull Creek on the Cushing Refinery Site, in Cushing, Oklahoma. On May 11, 2001, the Commission provided notice of this proposed action and offered an opportunity for a hearing.[6] There were no requests for a hearing received. On the basis of the Environmental Assessment, the Commission has concluded that this licensing action would not significantly effect the quality of human environment and has determined not to prepare an environmental impact statement for this proposed action.

The above documents related to this proposed action are available for inspection on the Commission's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.*

Dated at Rockville, Maryland, this 13th day of July 2001.

For the U.S. Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–18174 Filed 7–19–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–31]

Yankee Atomic Electric Company Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 to Yankee Atomic Electric Company (YAEC). The requested exemption would allow YAEC to deviate from the requirements of Certificate of Compliance 1025 (the Certificate), Appendix A, Technical Specifications (TS), Items 3.1.5, Canister Maximum Time in Vacuum Drying, and 3.1.6, Maximum Time in Transfer Cask. The exemption would allow YAEC to use extended operating times in Limiting Condition for Operation (LCO) 3.1.5 and 3.1.6 for the fuel loading campaign at Yankee Nuclear Power Station (YNPS) in Rowe, Massachusetts.

Environmental Assessment (EA)

Identification of Proposed: By letter dated April 3, 2001, as supplemented on June 6, 2001, YAEC requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 to deviate from the requirements of Certificate of Compliance 1025, Appendix A, Items LCO 3.1.5 and 3.1.6. YAEC is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K.

YAEC plans to use the NAC-MPC cask system to store spent nuclear fuel, generated at YNPS, at an independent spent fuel storage installation (ISFSI) located in Rowe, Massachusetts, on the YNPS site. The YNPS ISFSI has been constructed for interim dry storage of spent nuclear fuel.

By exempting YAEC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214, YAEC will be authorized to extend loaded canister vacuum drying and the time spent fuel is in the transfer cask for canister heat loads that are lower than the design basis heat load.

The time duration from completion of draining the CANISTER through completion of vacuum dryness testing and the introduction of helium backfill shall not exceed the time shown for the specified heat loads:

Total heat loads (L)(kW)	Time limit (hours)
10.5 < L ≤ 12.5	38
8.5 < L ≤ 10.5	48
6.5 < L ≤ 8.5	58
4.5 < L ≤ 6.5	83
L ≤ 4.5	Not Limited

The time duration from end of external forced air or in-pool cooling of the CANISTER through completion of vacuum dryness testing and the introduction of helium backfill shall not exceed the time shown for the specified heat loads:

Total heat loads (L)(kW)	Time limit (hours)	
	Forced air	In-pool
10.5 < L ≤ 12.5	10	10
8.5 < L ≤ 10.5	12	12
6.5 < L ≤ 8.5	16	16
4.5 < L ≤ 6.5	40	40

The time duration from the introduction of helium backfill of the CANISTER through completion of the CANISTER transfer operation from the TRANSFER CASK to the CONCRETE CASK is not limited.

The specifications above would be in lieu of those in the current Certificate of Compliance No. 1025, Rev. 0, Appendix A, LCO 3.1.5 and 3.1.6. The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

On September 9, 2000, the cask designer, NAC International (NAC), submitted to NRC an application to amend Certificate of Compliance 1025. The requested amendment includes the same revisions to LCO 3.1.5 and 3.1.6 in Appendix A to the Certificate as requested in this exemption. The NRC staff has reviewed the application and determined that extending operating times in TS LCO 3.1.5 and 3.1.6 would have minimal impact on the design basis and would not pose a threat to public health and safety.

Need for the Proposed Action: The revised LCO 3.1.5 and 3.1.6 increase TS times, which are likely to reduce the frequency of entering LCO action statements, thus, reducing radiation doses to workers. The current TS LCO 3.1.5 and 3.1.6 time limits are based on canisters with maximum heat load and the probability for entering LCO action statements will significantly increase for canisters that are lower than the design basis heat load. If action statements are entered as a result of TS requirements without a safety significance, workers will be exposed to low radiation fields for longer periods of time. This would not be consistent with As Low As Reasonably Achievable (ALARA) practices. Workers should be able to conduct loading operations without facing unnecessary time/schedule pressure with sufficient operational flexibility. Unless the exemption is granted or the Certificate is amended, the TS LCO 3.1.5 and 3.1.6 action statements will likely be unnecessarily entered, resulting in additional radiation doses to workers. Because the 10 CFR Part 72 rulemaking to amend the Certificate will not be completed prior to the date that YNPS plans to begin loading fuel into the NAC-MPC cask systems, the NRC is proposing to grant this exemption based on the staff's technical review of information submitted by YAEC and NAC.

Environmental Impacts of the Proposed Action: It has already been determined by the Commission that spent fuel can be stored safely and without significant environmental impact at an onsite ISFSI in the NAC-MPC cask system (65 FR 12444, dated March 9, 2000). Extending the TS times will not increase the probability or consequences of accidents. No changes have been requested to the types or quantities of any radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Occupational radiation exposure will be decreased by the

[6] 66 FR 24167

avoidance of unnecessarily entering the action statements in LCO 3.1.5 and 3.1.6. There are no significant radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption and use the TS times in the current Certificate. Denial of the exemption could potentially lead into unnecessarily entering the TS LCO action statements 3.1.5 and 3.1.6 resulting in increased radiation doses to workers.

Agencies and Persons Consulted: On June 22, 2001, Mr. Jim Muckerhide, Nuclear Engineer, Nuclear Safety, of Massachusetts Emergency Management Agency was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 so that YAEC may use revised TS time at YNPS ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland this 12th day of July 2001.

For the Nuclear Regulatory Commission

E. William Brach,

Director Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–18176 Filed 7–19–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Working Group on Integrated Materials Performance Evaluation Program (IMPEP) Lessons Learned

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of formation of working group and public meeting.

SUMMARY: The Nuclear Regulatory (NRC) is announcing a meeting and the formation of a working group on Integrated Materials Performance Evaluation Program (IMPEP) Lessons Learned. The working group will provide recommendations to the NRC on enhancements and lessons learned to strengthen the IMPEP process. The working group is composed of representatives from the NRC and Agreement States.

DATES: The first meeting will be held on July 31–August 2, 2001, from 8 am to 5 pm.

ADDRESSES: NRC Headquarters, 11555 Rockville Pike, Room O–3–B–6, Rockville, Maryland, 20852. These meetings will be open to the public. Future meetings will be announced on the NRC public meeting web site, *http://www.nrc.gov/NRC/PUBLIC/meet.html.*

FOR FURTHER INFORMATION CONTACT: Kathleen Schneider, Senior Health Physicist, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Telephone: 301–415–2320; e-mail: kxs@nrc.gov.

SUPPLEMENTARY INFORMATION: In FY 1996, NRC began implementation of IMPEP in the evaluation of Agreement State and Regional materials programs to assure that public health and safety are adequately protected from the hazards associated with the use of radioactive materials and that Agreement State programs are compatible with NRC's programs. The IMPEP process employs a team of NRC and Agreement State staff to assess both Agreement State and NRC Regional Office radioactive materials licensing and inspection programs. All reviews use common criteria in the assessment and place primary emphasis on performance. Additional areas have been identified as non-common performance indicators and are also addressed in the assessment. The final determination of adequacy of each NRC Regional Office and both adequacy and compatibility of each Agreement State program, based on the review team's report, is made by a Management Review Board (MRB) composed of NRC managers and an Agreement State program manager who serves as the Agreement State liaison to the MRB.

At the end of FY1999, NRC completed its first round of IMPEP reviews for all Agreement States. Regional reviews originally were performed every 2 years and are now performed every 4 years. Agreement State reviews occur at frequencies of 2–4 years. From its inception, IMPEP has been an iterative process. As the program progressed from the pilot, through interim implementation to final implementation, NRC staff has factored in experience, comments and suggestions to enhance IMPEP. At the completion of this first cycle of reviews, NRC believes that an independent examination by a working group of the IMPEP experiences to date could further enhance this program. The working group will evaluate IMPEP experiences for additional enhancements and lessons learned to strengthen the IMPEP process.

A copy of the working group charter is available through the NRC's Agencywide Document Access and Management System (ADAMS) at http://www.nrc.gov/NRC/ADAMS/index.html, where the accession number is ML011930478. Copies may also be obtained by contacting the NRC's Public Document Room (PDR) by calling (800) 397–4209, faxing a request to (301) 415–3548, or sending a request by electronic mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 16th day of July 2001.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

[FR Doc. 01–18175 Filed 7–19–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–11344]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Intermagnetics General Corporation, Common Stock, $.10 Par Value)

July 16, 2001.

Intermagentics General Corporation, a New York corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of

1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.10 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Issuer states in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of New York, in which it was incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On May 30, 2001, the Board of Directors of the Issuer unanimously adopted resolutions to withdraw the Issuer's Security from listing on the Amex and, instead, list it on the Nasdaq Stock Market. In its application, the Issuer states that trading in the Security on the Amex will cease on July 10, 2001 and trading in the Security is expected to begin on the Nasdaq at the opening of business on July 11, 2001.

In making the decision to withdraw the Security from listing on the Exchange, the Issuer represents that (i) listing on the Nasdaq will be more beneficial to the Issuer's shareholders than the present listing on the Amex because of the Issuer's emergence and growing recognition as a technology-driven company; (ii) the Issuer's peers and similar companies are listed on Nasdaq; and (iii) the move to Nasdaq will further enhance the liquidity of the Issuer's stock, making it more attractive to institutional investors.

The Issuer's application relates solely to the Security withdrawal from listing on the Amex and from registration under section 12(b) of the Act[3] and shall affect neither its approval for trading on the Nasdaq, nor its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before July 30, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).

[2] 15 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–18168 Filed 7–19–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27426]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 13, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 7, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of my notice or order issued in the matter. After August 7, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alliant Energy Corporation, et al. (70–9891)

Alliant Energy Corporation (''Alliant Energy''), a registered holding company, and Alliant Energy's direct nonutility subsidiary, Alliant Energy Resources, Inc. (''AER''), and AER's direct nonutility subsidiaries, Alliant Energy Integrated Services Company, Alliant Energy Investments, Inc., Alliant Energy Transportation, Inc., and Whiting Petroleum Corporation (collectively, ''Applicants''),[1] on behalf of itself and its direct and indirect nonexempt nonutility subsidiary companies, both located at 222 West Washington Avenue, Madison, Wisconsin 53703, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32, 33, and 34 of the Act and rules 43, 45(a), 46(a), 53, 54, 58, and 80–92 under the Act.

Applicants request authority to engage in a variety of financing transactions, credit support arrangements, and other related proposals, as more fully discussed below, commencing on the effective date of an order issued under this filing and ending December 31, 2004 (''Authorization Period''). In addition, Alliant Energy seeks authority to finance exempt wholesale generator (''EWG'') and foreign utility company (''FUCO'') investments in an aggregate outstanding amount of up to $1.75 billion. This new proposal would replace certain authorizations that the Commission has previously granted to Alliant Energy.[2] Applicants state that the proceeds from the financings will be used for general corporate purposes, including: (1) Financing, in part, investments by and capital expenditures of Alliant Energy, AER and AER's current and future direct and indirect nonutility subsidiaries (''Nonutility Subsidiaries''), including, without limitation, the funding of future investments in EWGs, FUCOs, and companies engaged or formed to engage in energy-related activities; (2) acquiring, retiring or redeeming by Alliant Energy or any Nonutility Subsidiary of any of its own securities; and (3) financing working capital requirements of Alliant Energy as well as Alliant Energy's utility subsidiaries,

[5] 17 CFR 200.30–3(a)(1).

[1] AER is the holding company for substantially all of Alliant Energy's nonutility investments and subsidiaries.

[2] Alliant Energy's current financing authority is contained in three separate orders: *WPL Holdings, Inc., et al.,* HCAR No. 26856 (April 14, 1998) (''Merger Order''); *Alliant Energy, et al.,* HCAR No. 26956 (December 18, 1998), *as modified by Alliant Energy, et al.,* HCAR No. 27304 (December 15, 2000) (collectively, ''Current Money Pool Order''), and *Alliant Energy, et al.,* HCAR No. 27069 (August 26, 1999), *as modified by Alliant Energy, et al.,* HCAR No. 27130 (February 4, 2000) and *Alliant Energy, et al.,* HCAR No. 27344 (February 12, 2001) (collectively, ''Current Financing Order''). Applicants request that authorization granted in this proceeding replace the authorizations under the Merger Order (as it relates to the issuance of Common Stock under shareholder and employee plans) and the Current Financing Order. Applicants state that the Money Pool Order is unaffected by this application-declaration, except that Alliant Energy's utilization of proceeds of short-term debt to make investments in EWGs and FUCOs would be subject to the EWG/FUCO investment limitation proposed in this proceeding.

Wisconsin Power and Light Company, South Beloit Water, Gas and Electric Company, Interstate Power Company, and IES Utilities, Inc.; Alliant Energy's subsidiary service company, Alliant Energy Corporate Services, Inc.; and the Nonutility Subsidiaries (''Subsidiaries'').

Specifically, Applicants seek authority for the following:

I. Alliant Energy External Financing

Alliant Energy requests authority to issue and sell from time to time equity and debt securities in an aggregate amount not to exceed $1.5 billion at any one time outstanding during the Authorization Period. These securities include common stock (''Common Stock''),[3] preferred stock (''Preferred Stock''), unsecured long-term debt (''Long-Term Debt'') and other preferred or equity linked securities. These securities, further described below, would be sold at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

A. Common Stock

Alliant Energy requests authority to issue and sell from time to time common stock through underwriters,[4] dealers,[5] agents, or a limited number of purchasers directly. Alliant Energy may also issue Common Stock or options, warrants or others stock purchase rights exercisable for Common Stock in public or privately negotiated transactions in exchange for the equity securities or assets of other companies.[6]

Alliant Energy also proposes to issue and/or purchase shares of its Common Stock (either currently or under forward contracts) in the open market for purposes of reissuing shares at a later date under plans that are maintained for stockholders, officers and employees, and nonemployee directors. Currently, Alliant Energy maintains three plans under which it may directly issue or purchase in the open market shares of Common Stock: Alliant Energy Corporation Long Term Equity Incentive Plan; Alliant Energy Corporation 401(k) Savings Plan; and Alliant Energy Corporation Shareowner Direct Plant (collectively, ''Stock Plans''). Alliant Energy also proposes to issue and/or purchase shares of Common Stock in accordance with the Stock Plans, as they are amended or extended, and similar plan(s) funding arrangements adopted in the future without any additional Commission approval.

B. Preferred Stock, Long-term Debt and other Preferred or Equity-Linked Securities

Alliant Energy proposes to issue Preferred Stock or other types of preferred or equity-linked securities issued in one or more series with such rights, preferences, and priorities as may be designated in the instrument creating each such series, as determined by Alliant Energy's board of directors. These securities will be redeemed no later than 50 days after issuance. The dividend rate on any series of Preferred Stock or other preferred or equity-linked securities will not exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of such securities.[7]

Long-term Debt of a particular series (1) may be convertible into any other securities of Alliant Energy, (2) will have a maturity ranging from one to 50 years, (3) will bear interest at a rate not to exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of such Long-term Debt, (4) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount, (5) may be entitled to mandatory or optional sinking fund provisions, (6) may provide for reset of the coupon pursuant to a remarketing arrangement, and (7) may be called from existing investors by a third party. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Long-term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

C. Nonutility Subsidiary Financing

Alliant Energy states that, in almost all cases, financings by AER and other Nonutility Subsidiaries will be exempt from Commission authorization pursuant to rule 52(b). However, in the limited circumstances where the Nonutility Subsidiary making the borrowing is not wholly owned by Alliant Energy, directly or indirectly, authority is requested under the Act for Alliant Energy through AER or any other Nonutility Subsidiaries, to make loans to these subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If loans are made to a Nonutility Subsidiary, that subsidiary will not sell any services to any associate Nonutility Subsidiary unless that subsidiary falls within one of the categories of companies to which goods and services may be sold on a basis of other than ''at cost.''

II. Guaranties

Alliant Energy requests authorization to enter into guaranties, obtain letters of credit, enter into expense agreements or otherwise provide credit support (''Guaranties'') with respect to the obligations of any subsidiary as may be appropriate to enable these companies to carry on their ordinary course of business in an aggregate principal or nominal amount not to exceed $3 billion outstanding at any one time (''Guaranty Limit''). Alliant Energy proposes that these Guaranties will be in addition to Guaranties by Alliant Energy authorized in the Money Pool Order. Alliant Energy requests authority to charge each Subsidiary a fee for providing credit support that is determined by multiplying the amount of the Guaranty Limit by the cost of obtaining the liquidity necessary to perform the Guaranty (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the Guaranty remains outstanding.

In addition, AER and other Nonutility Subsidiaries request authority to provide to other Nonutility Subsidiaries guaranties and other forms of credit support (''Nonutility Subsidiary Guaranties'') in an aggregate principal amount not to exceed $600 million outstanding at any one time, exclusive of any guaranties and other forms of credit support that are exempt under rule 45(b) and rule 52(b), provided that the amount of any Nonutility Subsidiary Guaranties in respect of obligations of

[3] Alliant Energy is authorized by the Merger Order to issue from time to time through December 31, 2001, up to 11 million shares of common stock.

[4] Common Stock is being sold in an underwritten offering, Alliant Energy may grant the underwriters a ''green shoe'' option, permitting the purchase from Alliant Energy at the same price of additional shares then being offered solely for the purpose of covering over-allotments.

[5] If dealers are utilized in the sale of Common Stock, Alliant Energy will see such securities to the dealers, as principals. Any dealer may then resell such Common Stock to the public at varying prices to be determined by such dealer at the time of resale.

[6] Alliant Energy states that these acquisitions would be either expressly authorized in a separate proceeding or exempt under the Act or the rules under the Act.

[7] Dividends or distributions on Preferred Stock or other preferred or equity-linked securities will be made periodically and to the extent funds are legally available for such purpose, but may be made subject to terms which allow the issuer to defer dividend payments or distributions for specified periods. Preferred Stock or other preferred or equity-linked securities may be convertible or exchangeable into shares of Common Stock.

energy-related companies as defined in rule 58 under the Act (''Rule 58 Companies'') shall also be subject to the limitations of rule 58(a)(1). Any Nonutility Subsidiary providing any such credit support may charge is associate company a fee for each Guaranty provided on its behalf determined in the same manner as specified above.

III. Hedging Transactions

Alliant Energy and the Nonutility Subsidiaries request authority to enter into interest rate hedging transactions with respect to existing indebtedness (''Interest Rate Hedges''), subject to certain limitations and restrictions, in order to reduce or manage interestate cost using financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (*i.e.,* a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities. Interest Rate Hedges would only be entered into with counterparties (''Approved Counterparties'') whose senior unsecured debt ratings, or the senior unsecured debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service, Fitch Investor Service or Duff and Phelps. These transactions would be for fixed periods and stated notional amounts. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Alliant Energy and the Nonutility Subsidiaries also request authority to enter into interest rate hedging transactions with respect to anticipated debt offers (''Anticipatory Hedges''), subject to certain limitations and restrictions. These Anticipatory Hedges would only be entered into with Approved Counterparties, and would be used to fix and/or limit the interest rate risk associated with any new issuance through (1) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury Securities and/or forward swap (''Forward Sale''), (2) the purchase of put options on U.S. Treasury Securities (''Put Options Purchase''), (3) a Put Options Purchase in combination with the sale of call options on U.S. Treasury Securities (''Zero Cost Collar''), (4) transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities, or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges. Applicants represent that each Interest Rate Hedge and Anticipatory Hedge will qualify for hedge accounting treatment under generallyacceptable accounting practices. Applicants would comply with the financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.

IV. Changes in Capital Stock of Subsidiaries

Applicants represent that the portion of an individual Subsidiary's aggregate financing to be effected through the sale of stock to Alliant Energy or other immediate parent company during the Authorization Period under rule 52 and/or under an order issued in this proceeding cannot be ascertained at this time. The proposed sale of capital securities may in some cases exceed the then authorized capital stock of that Subsidiary. In addition, a Subsidiary may choose to use capital stock with no par value. Also, a Subsidiary may wish to engage in a reverse stock split to reduce franchise taxes or for other corporate purposes. As needed to accommodate these proposed transactions and to provide for further issuances of securities, the Applicants request authority to change the terms of any Subsidiary's authorized capital stock capitalization by an amount deemed appropriate by Alliant Energy or other intermediate parent company, provided that if a Subsidiary is not wholly owned, the consent of all other shareholders has been obtained for this change. A Subsidiary would be able to change the par value, or change between par value and no-par value stock, without additional Commission approval. Any such action by a utility subsidiary of Alliant Energy would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission in the state or states where the utility subsidiary is incorporated and doing business.

V. Financing Subsidiaries

Alliant Energy and the Nonutility Subsidiaries request authority to acquire, directly or indirectly, the equity securities of one or more subsidiaries to facilitate financing (''Financing Subsidiaries''). These Financing Subsidiaries would be organized specifically for the purpose of facilitating the financings of the authorized and exempt activities (including exempt and authorized acquisitions) of Alliant Energy and the Nonutility Subsidiaries through the issuance of long-term debt or equity securities, including but not limited to monthly income preferred securities, to third parties, and to transfer the proceeds of such financings to or as directed by the Financing Subsidiary's parent. Alliant Energy may, if required, guarantee or enter into expense agreements in respect of the obligations of any Financing Subsidiary that it organizes. The amount of any securities issued by a Financing Subsidiary of Alliant Energy would be counted against the limitation on the amounts of similar types of securities that Alliant Energy is authorized to issue directly, as set forth in this application-declaration or in an order or orders issued in any other proceeding. To avoid double counting, however, any credit support provided by Alliant Energy Financing Subsidiaries would not also be counted against the Guaranty Limit.

VI. Intermediate Subsidaries and Subsequent Reorganizations.

Alliant Energy and AER propose to acquire, directly or indirectly, the securities of one or more intermediate subsidaries (''Intermediate subsidaries''), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs, FUCOs, Rule 58 Companies, exempt telecommunication companies (''ETCs'') as defined in section 34 of the Act, or other nonexempt Nonutility Subsidiaries authorized by order of the Commission. To the extent these transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, Alliant Energy requests authority for intermediate Subsidiaries to engage in development activities (''Development Activities'')[8]

[8] Development Activities will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other

and administrative activities (''Administrative Activities'') [9] relating to these entities.

An Intermediate Subsidiary may be organized, among other things, (1) in order to facilitate the making of bids or proposals to develop or acquire an interest in any EWG or FUCO, Rule 58 Company, ETC or other nonexempt Nonutility Subsidiary; (2) after the award of a bid proposal, in order to facilitate closing on the purchase or financing of any acquired companies; (3) at any time subsequent to the consummation of an acquisition of an interest in any such company in order, among other things, to effect an adjustment in the respective ownership interests in such business held by Alliant Energy or AER and nonaffilated investors; (4) to facilitate the sale of ownership interests in one or more acquired nonutility companyies (5) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (6) as a part of tax planning in order to limit Alliant Energy's exposure to U.S. and foreign taxes; (7) to insulate Alliant Energy and the Utility Subsidiaries from operational or other business risks that may be associated with investments in nonutility companies; or (8) for other lawful business purposes.

Investments in Intermediate Subsidiaries may take the form of any combination of the following: (1) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests; (2) capital contributions; (3) open account advances with or without interest; (4) loans and (5) guaranties issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from: (1) Financings authorized in this proceeding; (2) any appropriate future debt or equity securities issuance authorization obtained by Alliant Energy from the Commission; and (3) other available cash resources, including proceeds of securities sales by AER or other Nonutility Subsidiary under rule 52. To the extent that Alliant Energy provides funds or Guaranties directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG or FUCO or a Rule 58 Company, the amount of these funds or guaranties will be included in Alliant Energy's ''aggregate investment'' in these entities, as calculated in accordance with rule 53 or rule 58 under the Act,[10] as applicable.

Alliant Energy also requests authority to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries, and the activities and functions related to these investments. To effect these consolidations or other reorganizations, Alliant Energy or AER may either contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary (including a newly formed Intermediate Subsidiary) or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. These transactions may take the form of a Nonutility Subsidiary selling or transferring the equity securities of a Subsidiary or all or part of that Subsidiary's assets as a dividend to an Intermediate Subsidiary or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of that Subsidiary, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable U.S. or foreign laws and accounting requirements, and any transaction structured as a sale would be carried out for a consideration equal to the book value of the equity securities being sold.

VII. Additional Investments in Energy Assets

AER and the other Nonutility Subsidiaries request authority to make additional investments in nonutility energy assets in the United States and Canada, specifically including natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities (collectively, ''Energy Assets''), that are incidental to the ongoing oil and gas exploration and production and energy marketing, brokering and trading operations of AER's subsidiaries. AER requests authorization to invest up to $800 million (''Investment Limitation'') at any one time outstanding during the Authorization Period in these Energy Assets or in the equity securities of existing or new companies substantially all of whose physical properties consist or will consist of these Energy Assets.[11] These Energy Assets (or equity securities of companies owning Energy Assets) may be acquired for cash or in exchange for Common Stock or other securities of Alliant Energy, AER, or other Nonutility Subsidiary of AER, or any combination of the foregoing. If Common Stock of Alliant Energy is used as consideration in connection with these acquisitions, the market value of that Common Stock on the date of issuance will be counted against the Investment Limitation. The stated amount or principal amount of any other securities issued as consideration in these transactions will also be counted against the Investment Limitation. Under no circumstances will AER or any oil or gas production or energy marketing subsidiary acquire, directly or indirectly, any assets or properties the ownership or operation of which would cause any of these companies to be considered an ''electric utility company'' or ''gas utility company'' as defined under the Act.

VIII. Sales of Goods and Services

AER and other Nonutility Subsidiaries propose to provide services and sell goods to each other at fair market prices determined and without regard to cost, and request an exemption (to the extent that rule 90(d) does not apply) under section 13(b) from the cost standards of rules 90 and 91 as applicable to each transaction, in certain instances.

IX. Energy-Related Activities Outside the United States

Applicants request authority for the Nonutility Subsidiaries to engage in energy-related activities both within and outside the United States. These activities include energy marketing, energy management and energy consulting services. Specifically, Applicants request authority to engage in energy marketing activities in Canada and request the Commission to reserve

third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses.

[9] Administrative Activities will include providing ongoing personnel, accounting, engineering, legal, financial, operating, technical and other support services necessary to manage Alliant Energy's investments in Nonutility Subsidiaries.

[10] ''Aggregate Investment'' is defined in rule 53(a)(1)(i) to mean all amounts invested, or committed to be invested, in EWGs and FUCOs, for which there is recourse, directly or indirectly, to the holding company.

[11] Companies whose physical properties consist of Energy Assets may also be currently engaged in energy (gas or electric or both) marketing activities. To the extent necessary, Applicants request authorization to continue such activities in the event they acquire such companies.

jurisdiction over energy marketing activities outside the United States and Canada pending the completion of the record in this proceeding. Applicants also request authority for the Nonutility Subsidiaries to provide energy management services and consulting services anywhere outside the United States. Applicants request that the Commission reserve jurisdiction over other energy-related activities outside the United States, pending completion of this record.

X. Payment of Dividends Out of Capital or Unearned Surplus

AER proposes, on behalf of itself and each of its nonexempt Nonutility Subsidiaries, that these companies be permitted to pay dividends out of capital and unearned surplus and to acquire, retire, or redeem securities that AER or any Nonutility Subsidiary has issued to any associate company, to the extent permitted under applicable corporate law and the terms of any applicable credit or security agreements. AER anticipates that there will be situations in which it or one or more Nonutility Subsidiaries will have unrestricted cash available for distribution in excess of any such company's current and retained earnings. In these situations, the declaration and payment of a dividend would be charged, in whole or in part, to capital or unearned surplus.

AER, on behalf of itself and each nonexempt Nonutility Subsidiary represents that it will not declare or pay any dividend or acquire, retire or redeem any securities of which any of these Nonutility Subsidiaries is the issuer that are held by an associate company, out of capital or unearned surplus in contravention of any law restricting the payment of dividends or the terms of any credit or security agreements.[12]

XI. Investments in EWGs and FUCOs

Alliant Energy requests authority to use the proceeds of authorized financing and Alliant Energy Guaranties to make investments in EWGs and FUCOs in an amount which, when added to Alliant Energy's existing aggregate investment, would not exceed $1.75 billion. Based on Alliant Energy's aggregate investments as of March 31, 2001 (approximately $355.9 million), this would enable Alliant Energy to make incremental investments in EWGs and FUCOs of about $1.39 billion. Alliant Energy, through subsidiaries of AER, currently holds interests in various foreign electric generation and distribution utility companies that have been certified as FUCOs. Alliant Energy does not hold an interest in any EWG at this time, but is investigating several potential investments.[13] As of March 31, 2001, Alliant Energy's aggregate investment in all of these entities was approximately $355.9 million. An aggregate investment in EWGs and FUCOs in an amount equal to $1.75 billion would be equal to about 160% of Alliant Energy's average consolidated retained earnings [14] as of March 31, 2001 ($1.093 billion).

Alliant Energy further represents that it will maintain common equity as a percentage of its consolidated capitalization (inclusive of short-term debt) at 30% or above during the Authorization Period, and will also maintain common equity as a percentage of capitalization of each of Alliant Energy's utility subsidiaries at 30% or above during the Authorization Period.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18169 Filed 7–19–01; 8:45 am]

BILLING CODE 8010–01–M

[12] The Commission has previously authorized substantial similar proposals. *See* Current Financing Order; *also see NiSource Inc.,* Holding Co. Act Release No. 27265 (Nov. 1, 2000).

[13] The largest concentration of Alliant Energy's foreign investments is in Brazil, followed by New Zealand and Australia. Alliant Energy has also made relatively small investments in China and Mexico.

[14] ''Consolidated retained earnings'' is defined in rule 53(a)(1)(ii) to mean the average of the consolidated retained earnings of the registered system as reported for the four most recent quarterly periods in the holding company's Annual Report on Form 10–K or Quarterly Report on Form 10–Q filed under the Securities Exchange Act of 1934.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [66 FR 36811].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: July 13, 2001.

CHANGE IN THE MEETING: Time Change.

The closed meeting scheduled for Thursday, July 19, 2001 at 11:00 a.m. time has been changed to Thursday, July 19, 2001 at 9:00 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 945–7070.

Dated: July 17, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–18297 Filed 7–18–01; 11:17 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44556; File No. SR–CBOE–2001–39]

Self-Regulatory Oganizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Addition of European-Style Exercise Option Series on the OEX

July 16, 2001.

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 July 10, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The proposed rule changes has been filed by the CBOE as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to: (1) Introduce for trading new series of European-style exercise options on the Standard & Poor's 100 Stock Index (''OEX''); and (2) include the new European-style options in a pilot program (''Pilot Program'') that eliminates position and exercise limits for OEX and other index options.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6)

[4] On January 22, 1999, the Commission approved a two-year Pilot Program that eliminated position and exercise limits for options on the S&P 500 Index (''SPX''), OEX, and Dow Jones Industrial Average (''DJX'') as well as for FLEX options overlying those indexes. *See* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 49111 (Feb. 1, 1999) (approving SR–CBOE–98–23) (''Approval Order''). By order dated January 30, 2001, the Commission extended the Pilot Program

The text of the proposed rule change is available at the CBOE 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently lists for trading American-style options on the OEX.[5] ''American-style'' exercuse allows investors to exercise their positions on any given business day prior to expiration.[6] This creates what is known as early exercise or assignment risk. Specifically, when an OEX option is exercised prior to expiration, that option is''assigned'' to an option writer. Thus, writers of OEX options are subject to the risk each day that same or all of their option may be exiercised. A writer that receives an assignment can have his trading strategy affected in a negative manner.

The Exchange believes that the risk of early exercise and assignment could be driving current users away from the OEX as well as deterring potential new users, both of which could have a negative effect on liquidity. Member firms have indicated to the Exchange the desire to trade OEX option series that do not subject them to early exercise and assignment risk. Accordingly, the Exchange proposes to introduce series of OEX options with European-style exercise.[7]

The same index will underlie both the ''new'' and existing series of OEX options. Contract specifications for the ''new'' series will be identical to the existing series with the exception of the exercise style. Thus, the ''new'' series also will be cash-settled and feature P.M.-settlement. The Exchange presently intends to trade the ''new'' European-style series of OEX options in the existing OEX pit under a separate symbol, XEO.[8] The Exchange notes that this is identical to the way that options on the SPX traded when the Exchange listed both A.M. and P.M.-settled SPX option series.[9]

As Noted above the American-style OEX series currently are not subject to position limits.[10] The Exchange hereby proposes to include European-style OEX series within the scope of that Pilot Program. Accordingly, both the American- and European-style series of the OEX will not be subject to position limits.

The CBOE believes it is reasonable to allow the European-style OEX series also to trade without position limits because they represent additional series of an existing product that the Commission has approved previously for non-position limit trading. The CBOE believes that waiving position limits for all OEX series, American- and European-style alike, will help to ensure that investors can continue to hedge SPX positions with OEX positions (and vice versa). The CBOE notes that, given the high correlation between the two indexes, many traders hedge positions in one index with positions in the other. The CBOE believes that subjecting European-style OEX series to position limits while allowing SPX to trade without position limits could limit severely the utility of this trading strategy.

The Exchange notes that it currently has the surveillance capabilities to detect any trading aberrations involving large positions in SPX and American-style OEX.[11] The Exchange states that upon introduction of European-style OEX series, these surveillance procedures will be expanded to monitor trading activity in the European-style series. Finally, the Exchanges notes that all of the representations it made in the Approval Order with respect to OEX options will apply to European-style OEX series as well.

The Exchange notes the Pilot Program altered the reporting thresholds applicable to OEX, DJX, and SPX options.[12] Specifically, the Pilot Program increased to 100,000 contracts the reporting threshold for positions in OEX options. The Exchange intends to require European-style OEX series be subject to the same reporting requirement. Moreover, the Exchange proposes that positions in the American- and European-style OEX series be aggregated for purposes of complying with this requirement. Accordingly, any combination of 100,000 contracts involving OEX American-style and OEX European-style series must be reported to the Exchange pursuant to CBOE Rule 24.4.03. The Exchange also notes that CBOE Rule 24.4.04, which authorizes the imposition of additional margin in OEX positions, will apply to all OEX series, whether European- or American-style.

Prior to commencement of trading of the ''new'' series, the Exchange will distribute to members an informational circular apprising them of the addition of the European-style OEX series. This circular will highlight the difference in exercise methodology between the series, identify the new symbols for the European-style series, and identify the initial expiration months and strike prices available for trading.[13] This circular also will indicate that, for purposes of the reporting requirement of CBOE Rule 24.4.03, positions in both series of OEX will be aggregated. The Exchange's public relations department will issue press releases to the media as a means to inform investors of the

until May 22, 2001. *See* Securities Exchange Act Release No. 43867 (Jan. 22, 2001), 66 FR 8250 (Jan. 30, 2001) (approving SR–CBOE–01–01). By order dated May 22, 2001, the Commission extended the Pilot Program until September 22, 2001. *See* Securities Exchange Act Release No. 44335 (May 22, 2001), 66 FR 29369 (May 30, 2001) (approving SR–CBOE–2001–26). The Exchange has a requested permanent approval of the Pilot Progrram. *See* File No. SR–CBOE–2001–22. The Commission has not acted on File No. SR–CBOE–2001–22.

[5] The OEX is a broad-based, capitaliztion-weighted index taht is cash-settled.

[6] The amount of cash received upon exercise depends on the closing value of the index in comparison to the strike price of the option.

[7] European-style option can be exercised only during a specified time period prior to expiration.

[8] The existing American-style series will continue to trade under the existing OEX symbols.

[9] *See* Exchange Act Release 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving SR–CBOE–92–09) (''1992 Order'').

[10] *See supra* note 4.

[11] The Approval Order required the Exchange to submit a report to the Commission on the status of the Pilot Program to allow the Commission to evaluate any consequences of the program and to determine whether to approve the elimination of position and exercise limits for these products on a permanent basis. The CBOE submitted the required report to the Commission on December 21, 2000. The report indicated that during the review period, the CBOE did not discover any instances where an account maintained an unusually large unhedged position. In fact, the data from the report found that only 12 accounts established positions in excess of 10% of the standard limit applicable to each index at the time the Pilot Program was approved. These positions were all in SPX and most were established by firms and market makers. All of the accounts were hedged. The CBOE's analysis did not discover any aberrations caused by large unhedged positions during the life of the Pilot Program.

[12] Reporting thresholds are the contract levels at which members are required to report information regarding customer positions to the Exchange.

[13] This information circular will clarify that the American-style OEX series will retain the existing OEX symbols while the European-style series will trade under the XEO symbol.

additional investment choices now available with the addition of the European-style OEX series. Finally, the Exchange will publicize on its website the introduction of the new European-style OEX series. The Exchange notes that these procedures, with the exception of the website publication, are similar to the procedures used when the Exchange listed both A.M.- and P.M.-settled SPX Index options in 1992.[14]

2. Statutory Basis

The addition of European-style OEX series will create an investment option that eliminates the risk of early exercise and assignment, which the CBOE believes will appeal to many institutions, professional traders, and investors. The Exchange believes that the introduction of new European-style exercise series will attract order flow back to the index floor. Moreover, the retention, and simultaneous trading, of American-style OEX options will allow investors to determine which product is most appropriate for them, thus enabling them to tailor more precisely their investment strategy. For these reasons, the Exchange believes that the proposed rule change is consistent with section 6 of the Act[15] in general, and furthers the objectives of section 6(b)(5) of the Act[16] in particular, because it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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) the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[18] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[19] The CBOE has requested that the Commission designate such shorter time period and accelerate the operative date of the proposal to July 20, 2001, so that the Exchange may begin trading the new European-style series of OEX options after the July expiration.

The CBOE states that introducing the new series of European-style OEX options on the first day after expiration Friday will allow investors to establish postions on the first day of the monthly cycle. The CBOE also believes that the proposal does not raise new, novel, or complex regulatory issues. In addition, the CBOE notes that the Commission previously approved OEX options for trading and European-style index options for trading, and that the proposal permits the trading of new European-style options series on the OEX.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative on July 20, 2001, to allow investors to establish positions in the new series of Euroopean-style OEX options on the first day of the monthly cycle.[20] The Commission believes that the new series of European-style OEX options will provide investors with an additional investment choice and may help to increase liquidity in OEX options.

The Commission believes that the proposal to include European-style OEX options in the position and exercise limit Pilot Program will provide consistent treatment of American-style and European-style OEX options for position and exercise limit purposes. In addition, the Commission believes that the aggregation of positions in American-style and European-style OEX options for purposes of the 100,000-contract reporting threshold is consistent with the purpose of the reporting threshold and will help to ensure the continued effectiveness of the reporting threshold.

The Commission notes that prior to the commencement of trading of the new European-style OEX series, the CBOE will distribute to members an information circular advising them of the addition of the new series. The information circular will note the difference in exercise style, identify the new symbols for the European-style OEX series, identify the initial expiration months and strike prices available for trading, and indicate that positions in American-style OEX options will be aggregated for purposes of the 100,000-contract OEX reporting threshold provided in the Pilot Program.

For all of the reasons set forth above, the Commission finds that it is consistent with the protection of investors and the public interest for the proposal to become operative on July 20, 2001. At any time within 60 day of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File no. SR–CBOE–2001–39 and should be submitted by August 10, 2001.

[14] *See* 1992 Order, *supra* note 9.

[15] 15 U.S.C. 78f.

[16] 16 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] *See* 17 CFR 240.19b–4(f)(6)(iii).

[19] *Id.*

[20] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18170 Filed 7–19–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44558; File No. SR–NASD–99–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 by the National Association of Securities Dealers, Inc. To Establish a Pilot Program To Provide Daily Share Volume Reports via NasdaqTrader.com

July 16, 2001.

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 February 18, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 24, 1999, Nasdaq amended the proposal.[3] The original proposal and Amendment No. 1 were published in the **Federal Register** on April 9, 1999 for notice and comment.[4] On May 30, 2001, the NASD again amended the proposal, which amendment completely replaces and supersedes the original filing and Amendment No. 1.[5] On July 10, 2001, Nasdaq again amended the proposal.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010, Systems Services, to establish a fee for the Volume and Issue Data Package provided through the NasdaqTrader.com web site. The text of the proposed rule change is below. Proposed new language is in italics.

Rule 7010 System Services

(a)–(o) No changes.

*(p) NasdaqTrader.com Volume and Issue Data Package Fee. The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be $70 per month. The charge to be paid by market data vendors for this information shall be $35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers * and data vendors. The Volume and Issue Data package includes:*

(1) Daily Share Volume reports
(2) Daily Issue Data
(3) Monthly Volume Summaries

** For purposes of this service, see definition of ''Qualified Institutional Buyer'' found in Rule 144A of the Securities Act of 1933.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In is filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on he proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to establish a fee for a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions (Qualified Institutional Buyers (''QIBs'')[7] and market data vendors through its NasdaqTrader.com web site. Under the proposal, subscribers to this service, as well as retail customers of participating market data vendors, will be able to obtain the Volume and Issue Data Package, proposed to be name ''Nasdaq Post Data'' (''Post Data'').

Post Data will consist of three separate reports that will be provided as a single package. The first item will be the Daily Share Volume Report, to be named ''Nasdaq Volume Post,'' which will provide subscribes with access to T+1 daily share volume in each Nasdaq security, listing the volume by each NASD member firm that reports volume in the security and has voluntarily chosen to permit the dissemination of this information. The daily share volume will be verified for accuracy by Nasdaq's Automated Confirmation Transaction Service (''ACT''). The second item, the ''Daily Issue Data'' report, will contain a summary of the previous day's activity for every Nadaq issue. The third item, ''Monthly Summaries,'' will provide monthly trading volume statistics for the top 50 market participants, broken down by industry sector, security, or type of trading (*e.g.,* block or total).

Post Data will be made available in two ways through the NasdaqTrader.com web site. The information will be provided to market data vendors to be redistributed to their retail customers for which the data vendor will pay a $35 per month fee to Nasdaq for each end user obtaining this information. The information will also be provided directly to subscribers, limited to NASD members and non-NASD member QIBs, for a fee of $70 per month.

Nasdaq filed this proposal in direct response to requests form professional Nasdaq market participants to increase the availability of Nasdaq-verified

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 18, 1999, Nasdaq submitted its initial proposal to provide only T+1 daily share volume reports in each Nasdaq security to market data vendors, NASD members, and non-NASD member Qualified Institutional Buyers (''QIBs'') as defined in Rule 144A under the Securities Act of 1933. 17 CFR 230.114A. After discussions with at least one market data vendor, and internal discussions at Nasdaq, Nasdaq filed an amendment on March 24, 1999 (''Amendment No. 1''). Amendment No. 1 completely replaced and superseded the original proposal.

[4] Securities Exchange Act Release No. 41244 (April 1, 1999), 64 FR 17429.

[5] *See* May 29, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC and attachments (''Amendment No. 2''). Amendment No. 2 completely replaced and superseded Amendment No. 1. In Amendment No. 2, Nasdaq proposed new fees.

[6] *See* July 9, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division, SEC (''Amendment No. 3''). In Amendment No. 3, Nasdaq: (1) Clarified that Amendment No. 2, as further amended by Amendment No. 3, should replace and supersede entirely the original proposal and Amendment No. 1; (2) clarified that the proposal is filed by the Association through its subsidiary, Nasdaq; (3) clarified that the asterisked footnote at the bottom of pages three and nine of Amendment No. 2 that defines ''Qualified Institutional Buyer'' should be included in the proposed rule language of Section 7010(p); (4) clarified that modifications to Nasdaq Post Data during the pilot period will be limited to minor enhancements to the content of the package made in accordance with Section 19(b) of the Act and Rule 19b–4 thereunder; and (5) provided an explanation of the rationale underlying the choice of the fees for Nasdaq Post Data.

[7] For purposes of this service, Nasdaq will rely on the definition of ''Qualified Institutional Buyer'' found in Rule 144A of the Securities Act of 1933. 17 CFR 230.144A.

trading data through NasdaqTrader.com. Sell-side traders use share volume to display their trading activity in specific Nasdaq issues, while buy-side representatives use similar data to determine which sell-side firm to select for execution of their orders. Post Data will provide a secure, controlled mechanism to allow these parties to view such data and make informed choices regarding their trading partners.

Modifications to Post Data during the pilot period will be limited to minor enhancements to the content of the package, and will be made in accordance with section 19(b) of the Act[8] and Rule 19b–4 thereunder.[9] Any such modifications will be provided at no additional cost to the subscribers and would be available to data vendors for redistribution.

Nasdaq recognizes the proprietary and confidential nature of the data contained in Post Data. As such, Nasdaq has established a secure information display and retrieval environment through the combined use of User Ids, passwords and digital certificates. To further protect NASD member firms' proprietary data, the service is designed so that the information will only be made available to the member firm itself, unless that member determines voluntarily to submit the information to be included in the Nasdaq Volume Post report for dissemination to other subscribers or vendors.

Concerns for data protection, and the system security requirements needed to encourage greater disclosure of proprietary trading statistics, also shaped Nasdaq's determination to make Post Data available only to NASD member firms, market data vendors, and QIBs. It is Nasdaq's belief that these groups represent the largest number of market participants who may benefit from the availability of the voluntarily disclosed, Nasdaq-verified, trading volumes. At the same time, these participants are also the most likely to possess the requisite staff and resources to comply with the system security mandates. Moreover, the QIBs defined in Rule 144A consist of entities registered with various regulatory bodies, which registration Nasdaq believes provides an additional layer of protection against the improper use of its members' proprietary trading data. Finally, the Rule 144A QIB definition upon which Nasdaq seeks to rely has already been adopted by the Commission as a standard delineating the characteristics of institutional market participants.

[8] 15 U.S.C. 78s.

[9] 17 CFR 240.19b–4.

Given the commercial uncertainties associated with the launching of any new data product, Nasdaq will establish this service as a 12-month pilot program, beginning from the date of Commission approval, to evaluate user interest. At the end of the 12-month pilot, Nasdaq will evaluate the program and make a determination to terminate the program, continue the program for an additional 12-month pilot, or continue the program as a permanent feature of NasdaqTrader.com.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of sections 15A9(b)(5) and (6) of the Act.[10] Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that the proposed fees represent an equitable allocation of reasonable fees among members and other users of the Nasdaq facilities associated with the offering of the Post Data product. Nasdaq established the fees in question based upon its consideration of numerous factors, including but not limited to: (1) The costs associated with the development, ongoing enhancement, maintenance, operation, and marketing of the Post Data product; (2) the cost associated with the ongoing maintenance and administration of the Nasdaq web security infrastructure that will be used to grant and validate access to the Post Data product; (3) reasonable overhead costs allocable to the Post Data product; and (4) projected subscriptions, usage, and revenues associated with the Post Data product during its initial period of availability. Nasdaq employed standard formulae to perform these projections, although such projections are inherently speculative.

In addition, Nasdaq believes that the proposed fees foster cooperation and coordination with persons engaged in facilitating transactions in securities and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq will make the Post Data product available to vendors on a wholesale basis for $35 per end user, and will charge $70 per direct user, who will access the product through the Nasdaq Trader web site. This fee differential reflects the projected cost of the incremental web security that is required to entitle direct users of the Post Data product. This fee structure also permits wholesale buyers to re-sell the Nasdaq product for up to a 100% premium before adding any value of any kind to the product. In other words, a vendor could purchase Post Data from Nasdaq for $35, and then re-sell it to end users without modification for $65 and still under-price Nasdaq vis a vis those end users. Nasdaq believes that this pricing structure, which Nasdaq will make available to all customers on a non-discriminatory basis, will stimulate, rather than stifle, competition.

[10] 15 U.S.C. 78o–3(b)(5) and (6).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited or nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** 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 NASD consents, the Commission will:

A. By order approve 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 date, views and arguments concerning the foregoing, including whether the proposed rule change is constituent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Communication 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 Nasdaq. All submissions should refer to file number SR–NASD–99–12 and should be submitted by August 10, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority: [11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18171 Filed 7–19–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3354]

State of Virginia

As a result of the President's major disaster declaration on July 12, 2001, I find that Tazewell County in the State of Virginia constitutes a disaster area due to damages caused by Severe Storms and Flooding occurring on July 8 through 10, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 10, 2001 and for economic injury until the close of business on April 12, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Virginia may be filed until the specified date at the above location: Bland, Buchanan, Russell and Smyth; and McDowell and Mercer counties in the State of West Virginia.

The interest rates are:

	In percent
For physicial damage	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 335406. For economic injury the number is 9M1700 for Virginia and 9M1800 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 13, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–18180 Filed 7–19–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 33877]

Illinois Central Railroad Company—Construction and Operation—In East Baton Rouge Parish, LA

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of availability of environmental assessment and request for comments.

SUMMARY: The Illinois Central Railroad Company (IC) has petitioned the Surface Transportation Board (Board) for authority to construct and operate a rail line approximately 3.2 miles in length in East Baton Rouge Parish, Louisiana, to serve ExxonMobil Chemical Company's Baton Rouge Polyolefins plant. The Board's Section of Environmental Analysis (SEA) has prepared an environmental assessment (EA) for this project. Based on the information provided and the environmental analysis conducted to date, the EA preliminarily concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA recommends that, if the Board approves this project, IC be required to implement the mitigation set forth in the EA. Copies of the EA have been served on all interested parties and will be made available to additional parties upon request. SEA will consider all comments received when making its final environmental recommendations to the Board. The Board will then consider SEA's final recommendations and the complete environmental record in making its final decision in this proceeding.

DATES: The EA is available for public review and comment. Comments are due by August 20, 2001.

ADDRESSES: Comments (an original and 10 copies) regarding this EA should be submitted in writing to: Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423, to the attention of Dana White.

FOR FURTHER INFORMATION CONTACT: Dana White, (202) 565–1552 (TDD for the hearing impaired 1–800–877–8339). To obtain a copy of the EA, contact Da-To-Da Office Solutions, Room 405, 1925 K Street, NW., Washington, DC 20006, phone (202) 293–7776 or visit the Board's website at *www.stb.dot.gov*.

By the Board, Victoria J. Rutson, Acting Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 01–18182 Filed 7–19–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34063]

Dallas Area Rapid Transit—Acquisition Exemption—Lines of Union Pacific Railroad Company

Dallas Area Rapid Transit (DART), a political subdivision of the State of Texas, a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire (by purchase) pursuant to an agreement entered into with Union Pacific Railroad Company (UP), as indicated in its notice, approximately 60.78 miles of rail line in Collin, Dallas, Denton, Grayson and Rockwall Counties, TX, as follows: (1) The segment of the Denton Subdivision between approximately milepost K–741.3 (Frankford Road) in Carrollton and approximately milepost K–729.5 in Lake Dallas (approximately 11.8 miles); (2) the segment of the Sherman Subdivision between approximately milepost 285.1 (Spring Creek Parkway) in Plano and approximately milepost 324.7 at South Sherman Junction (approximately 39.6 miles); (3) the Rowlett Extension between approximately milepost 745.5 (near Kirby Road) in Rowlett and approximately milepost 741.3 in Rockwall (approximately 4.2 miles); (4)

[11] 17 CFR 200.30–3(a)(12).

the White Rock/Fair Park Connector between approximately milepost 6.93 (the GC&SF Overpass) at Tenison Park and approximately milepost 5.06 near Missouri Pacific Junction (approximately 1.87 miles); and (5) the Brookhollow Branch Line between the DFW Main at approximately milepost 0.0 and the Denton Subdivision at approximately milepost 3.31 (approximately 3.31 miles).

DART will acquire UP's interest in the rail right-of-way on the Denton Subdivision between approximately milepost K–729.5 in Lake Dallas and approximately milepost K–721.53 in Denton (City of Denton Line) that is presently subject to a trail use agreement between UP and the City of Denton. *See Missouri Pacific Railroad Company—Abandonment Exemption—In Denton County, TX,* Docket No. AB–3 (Sub-No. 99X) (ICC served May 28, 1993). Among other things, DART will acquire UP's right to restart freight service on the City of Denton Line. DART states that it has no intention of exercising that right at the present time, but that the right to restart freight service is a residual common carrier interest and the acquisition of that right requires Board approval. *See Norfolk & Western Railway Company—Abandonment Between St. Marys and Minster in Auglaize County, OH,* Docket No. AB–290 (Sub-No. 68) (ICC served Oct. 25, 1993).

DART will also acquire the above-referenced segment of the Denton Subdivision, the above-referenced segment of the Sherman Subdivision, the Rowlett Extension and the Brookhollow Branch Line, subject to the Dallas, Garland and Northeastern Railroad, Inc.'s (DGNO) leasehold interest in those lines for the operation of freight service and will acquire the White Rock/Fair Park Connector subject to the trackage rights of certain freight railroads in that segment.[1] DART certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual freight revenues are not projected to exceed $5 million.

The transaction was scheduled to be consummated on or before June 28, 2001, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding 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. 34063, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, 2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 13, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–18116 Filed 7–19–01; 8:45 am]

BILLING CODE 4915–00–P

[1] DART will also acquire from UP: (1) All spur and lead tracks connecting with the Brookhollow Branch Line; (2) the approximately 0.5-mile lead track from the Denton Subdivision to the Coca Cola Bottling Plant; (3) the SSW bridge across I–30 at Dallas Convention Center and South Side Development, and (4) the H&TC bridge across I–30 between Dallas Farmer's Market and DART right-of-way north of the LRT Yard Lead. The acquisition of these spur tracks, lead tracks and other property interests do not require Surface Transportation Board approval. *See* 49 U.S.C. 10906.

DGNO's leasehold interest in the Sherman Subdivision, the Rowlett Extension, and the Brookhollow branch line will be the subject of a forthcoming petition for exemption, wherein DGNO will seek exemption from the Board for approval to convert most of its leasehold interests into trackage rights with DART. There is no freight traffic over the portion of the Sherman Subdivision being acquired by DART between approximately milepost 285.1 (Spring Creek Parkway) and approximately milepost 290.5 (Stacy Road). DART states that shortly after consummation of the acquisition of the above segment DART will seek Board authority to abandon that segment and DGNO will seek Board authority to discontinue its lease on that segment.

The Burlington Northern Santa Fe Railway Company, DGNO and possibly other freight railroads have trackage rights over the White Rock/Fair Park Connector. There is no current local freight service on the White Rock/Fair Park Connector segment, and any local or overhead freight railroad operations on the White Rock/Fair Park Connector in the future will be conducted by entities other than DART pursuant to such trackage rights.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 182X)]

Union Pacific Railroad Company-Discontinuance Exemption-In Weld and Boulder Counties, CO

On July 2, 2001, the Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over a segment of its Boulder Industrial Lead, extending from milepost 18.79 near Eagle Mine to milepost 31.0 near Valmont, a distance of 12.21 miles, in Weld and Boulder Counties, CO. The line traverses U.S. Postal Service Zip Codes 80026, 80303 and 80516 and includes the station at Eagle Mine.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 19, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 182X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001, and (2) Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the exemption petition are due August 10, 2001.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 12, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–18115 Filed 7–19–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 13, 2001

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 20, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0192.

Form Number: IRS Form 4562.

Type of Review: Revision.

Title: Depreciation and Amortization (Including Information on Listed Property).

Description: Taxpayers use Form 4562 to: (1) claim for depreciation and/or amortization; (2) make a section 179 election to expense depreciable assets; and (3) answer questions regarding the use of automobiles and other listed property to substantiate the business use under section 274(d).

Respondents: Individuals or households, Business or other for-profit, Farms.

Estimated Number of Respondents/ Recordkeepers: 6,500,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—37 hr., 19 min.
Learning about the law or the form—5 hr., 10 min.
Preparing and sending the form to the IRS—5 hr., 59 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 298,367,500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–18144 Filed 7–19–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–53]

Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Customs broker license cancellations.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations (19 CFR 111), the following Customs broker licenses are cancelled. Some of these entities continue to provide broker services under another of their multiple license numbers. Because previous publication of some records cannot be readily verified, the records are now being published to ensure Customs compliance with administrative requirements.

Name	License	Port name
A.J. Murray Co., Inc.	03571	New York.
A.W. Fenton Co., Inc.	06697	New York.
AA Customs Brokers Trueba Saldivar	14365	El Paso.
ABC Int'l	03154	New York.
Abramo, Frank C.	02026	New York.
Accelerated Customs Brokers	07411	San Francisco.
Accelerated Shipping Co.	10412	New York.
Aeolian Shipping Co., Inc.	02527	New York.
Aero Space Cargo, Inc.	06172	New York.
AF Int'l	09568	New York.
Air Marine Brokers Ltd.	05596	New York.
Air-Barr Shipping Corporation	03514	New York.
Airport Clearance Service, Inc.	04446	New York.
Allen Forwarding (NY), Inc.	05344	New York.
Altenberg, Hans	04126	New York.
Alternative Brokers Int'l, Inc.	09634	New York.
Am-Can Freight Forwarders	04784	New York.
Ambrosio, Dominc J.	02657	New York.
Amerford Int'l Corporation	03424	New York.
American Safe System, Inc.	04612	New York.
Amshico Corp.	05835	New York.
Anderson, Robert L.	04951	Seattle.
Arnold, Alfred H.	02209	New York.
Arthur J. Fritz Co., Inc.	02876	Seattle.
Ascione, Pasquale	00901	New York.
Augerot, William	03454	New York.
AUT Import Services, Inc.	07460	New York.
Avery, Dwain O.	04486	Tampa.
B & L Customs Brokers, Inc.	05837	New York.
Baker, Irons & Dockstader, Inc.	01445	New York.
Baldassano, Vincent	01807	New York.
Barbieri, Philip A.	02092	New York.

Name	License	Port name
Barbieri, Stephen	02222	New York.
Barnett, Lawrence	02587	New York.
Barnett/Novo Int'l Corp.	04364	New York.
BDP Int'l, Inc.	09097	New York.
Beacon Shipping Co., Inc.	03729	New York.
Becker, Stewart	09145	New York.
Bee Int'l, Inc.	05828	Tampa.
Behring Int'l, Inc.	05171	New York.
Benkart, F.J.	01148	New York.
BJG Int'l, Inc.	04407	New York.
Blankley, Joseph R.	01547	New York.
Bonvissuto, Michael	02249	New York.
Bowen, Albert E.	03721	New York.
Brian R. Glynn CHB, Inc.	07303	New York.
Bridgetts, Donald P.	02512	New York.
Bridgetts, William F.	01909	New York.
Bridgetts & Co., Inc.	01479	New York.
Briggs, Samuel Augustus, Jr.	03007	New York.
Bruce Duncan Company, Inc.	04321	New York.
Burlington Air Imports	07294	New York.
Burlington Air Imports, Inc.	06963	Los Angeles.
C.A. Haynes & Co., Inc.	03699	New York.
C.F. Liebert, Inc.	04297	Seattle.
C.H. Powell Co., Inc.	02501	New York.
C.H. Timm & Son, Inc.	02758	New York.
Cal-Asia Int'l, Inc.	05360	San Francisco.
California Capitol Exports	09769	San Francisco.
Cargo Clearance Corp.	04253	New York.
Cargo Express Custom Brokers, Inc.	05599	New York.
Cargo Network, Inc.	07081	New York.
Carney, John M.	03483	New York.
Centanni, Julius S.	04606	New Orleans.
Cerillo, Salvatore J.	01997	New York.
Chiarini, Joseph	02573	New York.
Christie, Roy G. W.	05843	Tampa.
Circle Int'l, Inc.	04460	New York.
Cizzon Corporation	04572	Chicago.
Coates, John	02437	New York.
Compagnie d'Affretement/Transport	07182	New York.
Conigliaro, Andrew S.	02571	New York.
Coniglio, Salvatore	02773	New York.
Connors, James	02589	San Francisco.
Consolidated Freightways Export Import	07874	New York.
Conway Customs Brokerage, Inc.	10063	New York.
Copeland Importing Services, Inc.	03697	New York.
Corff, Frank	02467	New York.
Coronet Brokers Int'l, Ltd.	04260	New York.
Courtney Int'l Forwarding, Inc.	12399	New York.
Cronin, Denis	01907	New York.
Cugus, Edward	02775	New York.
Culhane, Thomas F.	09003	New York.
Cunningham, Martin H.	07865	Tampa.
Cutroneo, Salvatore	02871	New York.
Danamar Associates, Ltd.	09359	Chicago.
Danheuser, Edwin J.	03695	New York.
Davis, A.D.	01080	New York.
DCI Int'l	05227	New York.
DCI Int'l	05007	San Francisco.
Dean Int'l, Ltd.	04002	New York.
DeMarco, Rosalie J.	09228	New York.
Dennis O'Donnell, Ltd.	06330	New York.
Desmond, Benjamin F.	02638	New York.
Dietrich, Peter J.	00844	New York.
Dingelstedt & Co.	05126	New York.
Distribution Services Int'l, Inc.	06184	San Francisco.
Division M, Inc.	04729	Chicago.
DNT Customs Services, Inc.	11516	Los Angeles.
Dorf Int'l, Inc.	01687	New York.
Dubienny, Theodore H.	02360	New York.
DUE Int'l, Inc.	10932	Los Angeles.
Dunlap, Alpers & Mott, Inc.	02343	New York.
Dunnington, Guy A.	01774	New York.
Dunnington & Arnold Int'l Inc.	06277	New York.
Dunnington & Arnold, Inc.	02654	New York.

Name	License	Port name
Dyson Shipping Co., Inc.	00219A	New York.
E.D.S. Int'l Shipping	07761	New York.
Eads, Larry W.	04561	San Francisco.
Echavarria, Rodlopho S.	16679	Laredo.
Edwards, Joseph	01749	New York.
Eilenberg, Carl	01897	New York.
Eisemann, Everett H.	02375	New York.
Emery Air Freight	06341	Dallas/Ft Worth.
Emery Distribution Systems, Inc.	04576	New York.
Encarnacion, Aurelio	06230	Los Angeles.
English, Edward J.	01627	New York.
Enterprise Shipping Corp.	09328	New York.
Enterprise Shipping Corp.	04021	San Francisco.
Ernst & Young	10913	San Francisco.
Eugene T. Gillen, Inc.	03748	New York.
Euramex Custom House Brokers, Inc.	06402	New York.
Express Forwarding and Storage Co., Inc.	02686	New York.
F.L. Kraemer & Co.	00040A	New York.
F.L. Kraemer & Co., Inc.	07349	New York.
F.W. Myers & Co., Inc.	04642	New York.
F.W. Myers & Co., Inc.	00729	Champlain.
F.W. Myers Co., Inc.	07612	Seattle.
Falkenmayer, Charles W.	02338	New York.
Fast Flowers, Inc.	09872	New York.
Feigelson, Alan	06594	New York.
Fenderson, Frank H.	02747	Portland, ME.
Forlenza, Nunzi A.	03629	New York.
Francesco Paris Forwarding Corp.	02846	New York.
Francis, Louis	01962	New York.
Frank P. Dow Co., Inc.	06996	San Francisco.
Freedman, Jerome	03041	New York.
Freedman & Slater Air Cargo Corp.	06138	New York.
Freedman & Slater Air Cargo Corp.	04348	New York.
Freedman & Slater Inc.	06137	New York.
Freight Base Customs Brokers, Inc.	06740	New York.
Freight Expediters, Inc.	05955	New York.
Freight Wings (Partnership)	09362	New York.
Friemel, Arnold L.	00043A	New York.
Frieson, Brenda Lyles	05727	St. Louis.
Fritz Companies, Inc.	07408	Tampa.
Fuschetto, Anthony	02755	New York.
G. Amador Corporation	05478	San Francisco.
G.A. Lopez Forwarding/Shipping Co.	03683	New York.
Gale, David	04474	New York.
Garcia, Michael, Jr.	02529	New York.
Gedenk of Panatlantic, Inc.	06205	New York.
Gehrig, John	02116	New York.
General Shipping/Trading Co., Inc.	04050	New York.
George S. Bush Co., Inc.	00096	Seattle.
Gerhard & Hey Co., Inc.	00731	New York.
GFI Customs Brokers, Inc.	07949	San Francisco.
Ginsberg, Lawrence	02470	New York.
Gladish & Associates	09384	San Francisco.
Glogower, Jack	04217	New York.
Glory Int'l Forwarders, Inc.	05760	New York.
Gommi, Julius W.	00900	New York.
Grealy, Eileen T.	04702	New York.
Gremillion, Ben L.	05046	New Orleans
Guglielmo, A.	10030	New York.
Gutman, Gertrude E.	05542	New York.
H.A. Gogarty	01514	New York
H.P. Lambert Company, Inc.	06579	Portland, ME.
H.W. Robinson Air Freight Corp.	02645	New York.
Halperin Shipping Co., Inc.	03059	New York.
Haniel-Phoenix Transport, Inc.	10042	New York.
Hannon, Timothy Otto	07277	San Francisco.
Hanrahan-Evans, Inc.	04084	New York.
Harder, Joseph E.	02348	New York.
Harlo-Air Cargo Brokers, Inc.	03142	New York.
Harper Robinson Company	03147	Seattle.
Harper, Robinson & Company	06529	Tampa.
Harris Brown, Inc.	07875	New York.
Harry F. Long, Inc.	04884	San Francisco.
Hauser Air Corp.	04504	New York.

Name	License	Port name
HAV Int'l Freight Corp.	09507	New York.
Hayes & Cupitt	03072	New York.
Heer, Alfons	03927	New York.
Heldl's Incorporated	02293	New York.
Helstrom, Friedman, DiGiacoma, Inc.	03917	New York.
Henkell, Robert Edward	02258	New York.
Hermann Ludwig, Inc.	04479	New York.
Hirshbach & Smith, Inc.	00114A	New York.
Hocherman, Joseph	02365	New York.
Humphrey McGreggor, Inc.	02585	Tampa.
Hundt, Frederick W.	01657	New York.
Hyams, Jack P.	02660	New York.
Hyams Expedition Corp.	04714	New York.
I.T.C. Compu-Customs Corp.	04366	New York.
Imperial Brokerage Corp.	06663	New York.
Import Specialist Assoc., Ltd.	09618	New York.
INB Int'l, Inc.	04465	New York.
Inter-Maritime Forwarding Co.	07369	Los Angeles.
Inter-Maritime Forwarding Co.	07201	Chicago.
Intercontinental Customs Brokers, Inc.	04823	Los Angeles.
Intercontinental Forwarders, Inc.	06084	New York.
Int'l Consumer Sales Inc.	11865	New York.
Int'l Customs & Shipping	09378	New York.
Int'l Customs Services, Inc.	03431	San Francisco.
Int'l Expediters, Inc.	02565	New York.
Int'l Freight Consultants, Inc.	06691	New York.
Int'l Trade Services Inc.	09532	Chicago.
Intertrans Corporation	06729	New Orleans.
Ira Furman & Co., Inc.	04977	New York.
J.B. Wood Shipping Co., Inc.	01204	New York.
J.D. Smith Inter-Ocean, Inc.	04306	New York.
JFMNY. Inc.	09096	New York.
J.J. Boll, Inc.	03701	New York.
J.J. Gavin & Co.	00252A	New York.
J.M. Cargo, Inc.	11725	New York.
James, Thomas C.	05677	Tampa.
James A. Bronson, Inc.	04989	Seattle.
James E. Fox & Co., Inc.	01348	New York.
James G. Wiley Co.	03425	San Francisco.
James J. Boyle & Company	03728	San Francisco.
James Loudon & Co.	02992	San Francisco.
John H. Faunce, Inc.	03649	New York.
John J. Coates, Inc.	03698	New York.
John M. Carney, Inc.	06871	New York.
John V. Carr & Son, Corp. (NY)	06889	New York.
JTS AirFreight Corporation	06650	New York.
Judson Sheldon Int'l	03192	New York.
"K" Air Brokerage, Inc.	09610	New York.
K&M Customs Brokers Int'l, Inc.	04664	New York.
K&M Customs Brokers, Inc.	04261	New York.
Kamen, Howard	01007	New York.
Karl Roessner Cargo Service, Inc.	10164	New York.
Karl Schroff Associates, Inc.	04793	Seattle.
Karl Schroff Int'l, Inc.	14408	San Francisco.
Kelley, Lawrence W.	02617	Portland, ME.
Kelly, Thomas P.	07308	New Orleans.
Kennedy World Wide, Inc.	09601	New York.
Kimoto, Paul T.	05712	San Francisco.
Kimoto, Paul	06065	Los Angeles.
King Shipping Co., Inc.	04709	New York.
King Shipping Company	02867	New York.
Kirk, John	04980	San Francisco.
Knoring, Abraham J.	01333	New York.
Korbul, Joseph	03214	New York.
Kormin Shipping Co., Inc.	03419	New York.
Kraemer, John Frederick	02538	New York.
Kraemer, Albert E.C.	00030	New York.
L.A. Ferm Company, Inc.	02957	New York.
Landau, Sylvia J.	01062	New York.
Lang & Marshall Company, Inc.	02664	New York.
Lansen, John P.	01083	New York.
Lansen-Naeve Corporation	01504	New York.
LaRosa, John	00869	New York.
Latherow, Charles A.	10256	Tampa.

Name	License	Port name
Lauderdale, Melvin L.	07960	New York.
Leemar Import, Inc.	09641	New York.
Lefkowits, David	02574	New York.
Lehart-Schwartz Shipping Corp.	03061	New York.
Lehat-Schwartz & Associates, Inc.	03080	New York.
Lehder, Wilfred E.	06224	New Orleans.
Leiner, Melvin	03839	New York.
Leo Int'l	05903	New York.
LEP Transport, Inc.	05223	San Francisco.
Leyden Customs Expediters, Inc	03149	New York.
Liberty Int'l NY, Inc	11293	New York.
Linsenmeyer, Richard J	01802	New York.
Livingston Int'l Inc	04639	New York.
Locurto & Funk, Inc	02711	New York.
Losekamp, Bernard Mark	13475	Cleveland .
Lund Pullara, Inc	04438	Tampa.
M.J. Corbett & Co., Inc	00081A	New York.
M.J. Corbett Air Division Corp	02964	New York.
Mack, Isabelle E	02471	New York.
Mallon, Vincent J	04976	New York.
Marin, Juan E	12513	San Juan.
Marion Shipping Co., Inc	02728	New York.
Markwalter, Frank J	00591	New York.
Mazzola, Joseph J	09171	New York.
McCarthy, Michael Joseph	03429	New York.
McFarland, C.J	01470	New York.
McGarry, William J	02185	New York.
McGregor Sea & Air Services	04927	San Francisco.
McGuinness, James	05608	New York.
McLean Cargo Specialists, Inc	07629	New York.
Medina, Manuel H	03069	New York.
Meyers Group (USA), Inc	11970	New York.
Modern Intermodal Traffic Co	04009	New York.
Mohegan Int'l Corp	02485	New York.
Monahan, Joanne M	09724	Buffalo.
Monarch Customs Brokers/Forwarders	10770	New York.
Monroe, Carl G	04571	Chicago.
Movers Port Service, Inc	09382	New York.
MRH Int'l, Ltd	08012	New York.
Muklfelder, Ronald	05970	New York.
N.J. Defonte Co., Inc	03916	New York.
N.M. Albert Co., Inc	02405	New York.
Naeve, H.N	01118	New York.
Nardella, Michael	02718	New York.
New York Customs Brokers, Inc	03559	New York.
New York Forwarding, Inc	13351	New York.
New York Int'l Customs Service	04098	New York.
Newbalt Associates, Inc	03307	New York.
Newman, Nathan	01552	New York.
Nicol, Frank	02946	Los Angeles
Nordisk Transport, Inc	02885	New York.
Norman G. Jensen, Inc	02095	Duluth.
Norman G. Jensen, Inc	05373	San Francisco.
O'Connell, Joseph P	01632	New York.
Oishi, Karla	10604	Los Angeles.
Opera Shipping Corp	04683	New York.
Oujevolk, George B	02350	New York.
Overton & Co. CHB, Inc	05187	New York.
Pad Import, Inc	05628	San Francisco.
Panalpina Airfreight, Inc	04616	Dallas.
Panalpina, Inc	07577	Washington, DC.
Passman, Edward M	01611	New York.
Paulssen & Guice, Ltd	04387	New York.
Pederson, Walter L	00749	New York.
Penson & Company	04182	San Francisco.
Perel, Maurice	04259	New York.
Person & Weidhorn, Inc	03661	New York.
Plichta, Felix A	02374	New York.
Polese, John	02616	New York.
Porter Expediters, Inc	09599	New York.
Pratt, Ian C	17487	New York.
Preferred LSI, Inc	13840	Los Angeles.
Premier Shipping Company, Inc	04448	New York.
Prime Customs Brokers Inc	10798	New York.

Name	License	Port name
PS Clearance Associates, Inc	06177	New York.
Pui Ching Company, Inc	16232	Los Angeles.
Quigley, Laurence J	02483	New York.
R&Y Int'l Customs Brokers	09600	New York.
R.A. Leslie & Company	08093	New York.
R.G. Hobelman & Company, Inc	05009	San Francisco.
Radix Group Int'l, Inc	07175	San Francisco.
Radix Group Int'l, Inc	07492	Dallas.
Ray-Mar Expedition Corp	04737	New York.
Redondo, Leticia S	05788	San Francisco.
Reiss, Josiah	00720	New York.
Republic Interocean Corp	03110	New York.
Richard Castillo CHB	10014	New York.
Rijabatainer, Inc	06199	New York.
Robbins, Allen J	04451	New York.
Robbins, Stuart	05041	New York.
Robbins, Fleisig & Phelps, Inc	04662	New York.
Roberts, Chester G	06151	New York.
Rodgers, John Martin	01776	New York.
Roth, Charles S	02461	New York.
Royal Freight Brokers, Inc	06893	New York.
Rubino, Joseph A	01564	New York.
Ryan, Joseph F	02858	New York.
S. Jackson & Sons	00028	New Orleans.
S. Stern & Company	02075	New York.
Salehzadeh, Judith Ann	09637	Chicago.
Santarelli, Joseph C	02960	New York.
Sasson, Samuel H	05730	New York.
Scansped Flight, Inc	05297	New York.
Schaaf, Walter	01077	New York.
Schenkers Int'l Forwarders, Inc	04673	Norfolk.
Schmid, Baldwin R	03374	New York.
Schmid's Forwarding (NJ), Inc	05869	New York.
Schmitt, Albert C.	02521	New York.
Schraub, Jerome	03958	New York.
Schreter, Otto C.	00766	New York.
Schroff, Karl W., Jr.	13544	San Francisco.
Schwartz, Gerald	03494	New York.
Schwartz, Norman C.	04539	New York.
Scibelli, Eugene	07224	New York.
Sea Lanes Shipping Co., Inc.	03212	New York.
Sea-Lanes Freighting Corp.	04022	New York.
Seamodal Transport Corporation	06015	Chicago.
Seaport Shipping Co., Inc.	04677	San Francisco.
Seller, Charles W.	00536	New York.
Seven Seas Brokers, Inc.	05734	Miami.
Shigoto Customs Brokers, Inc.	03402	New York.
Shipco, Inc.	06630	New York.
Sichel, Edwin	01896	New York.
Sirota, Barney	02631	New York.
Skyline Cargo Services, Inc.	04850	New York.
Slater, Jerome	02259	New York.
Smith, Elaine A.	02414	New York.
Smith, Theodore B., Jr.	01755	New York.
Sobel Shipping Company	02749	New York.
SOL Int'l, Inc.	11675	New York.
Sopac Transport Corp.	02723	New York.
Southwest Customs Service Corp.	13271	Los Angeles.
Stair Cargo Brokers, Inc.	09442	New York.
Sterling Cargo Int'l, Inc.	13809	Dallas.
Strategic Transportation Company	05916	San Francisco.
Stringfield, William M.	06503	Los Angeles.
Suber, Julia Thomas	10975	Savannah.
Sullivan, Garrett X.	02332	New York.
Super Sonic Transport	04368	New York.
Superior Customs Brokers, Inc.	05019	New York.
Surface Air Int'l, Inc.	04941	New York.
Synodis, John	02136	New York.
T.J. Cavanagh Associates, Inc.	09225	New York.
Tarus, Charles J.	02204	New York.
Tassa, Nicholas	05511	New York.
Theodore B. Smith Company, Inc.	02077	New York.
Thomas, Charles M.	01418	New York.
Thornley & Pitt	02822	San Francisco.

Name	License	Port name
Three Way CHB	06274	New York.
Timke, Robert	02572	New York.
Tomas Shipping Company, Inc.	03088	New York.
Traffic Int'l Corp. (LAX)	13916	Los Angeles.
Trans Air Import, Inc.	03509	New York.
Trans-Orient Int'l Freight	06112	New York.
Transatlas Int'l, Inc.	04727	New York.
Turnpike Express Corp.	11903	New York.
Twis Int'l, Inc.	03984	New York.
Tyson, Donald B.	02622	New York.
Unit Int'l of Miami	13168	Miami.
United Customs Inc.	05423	New York.
United Import Services, Inc.	09847	New York.
Vanguard Import Services, Inc.	04865	New York.
VanWie, Joseph P.	02786	New York.
Venslovaitis, Virginia H.	11779	Champlain.
Vinson, Benjamin	01779	New York.
W.A. Phelps & Co., Inc.	04644	New York.
W.C. Auger & Company	03011	San Francisco.
W.J. Byrnes-Air Division, Inc.	00060	San Francisco.
W.J. Byrnes-Air Division, Inc.	02285	San Francisco.
W.R. Keating & Co., Inc.	01566	New York.
Waldron Bowers, Inc.	04201	Honolulu.
Wilcox, Sherri	11719	Los Angeles.
William L. Bane & Co.	02295	New York.
Winslow Manly, Inc.	03772	New York.
Wolf & Gerber	06313	New York.
World Express Group	13122	San Francisco.
World Freight Forwarders, Inc.	13055	New York.
World Trade Customs Brokers, Inc.	04122	New York.
WTC Import Services, Inc.	09997	New York.
WTC Int'l, Inc.	04501	San Francisco.
WTC Int'l, Inc.	04067	New York.
WTT Customs House Brokerage, Inc.	07181	Washington, DC.
XL Brokers Int'l, Inc.	10385	Seattle.
York Marine, Ltd.	07348	New York.
Young, James	02605	New York.

Dated: July 5, 2001.

John H. Heinrich,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–18163 Filed 7–19–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: ''French Dermatological Laboratory''

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C.1124), of the trade name ''French Dermatological Laboratory,'' used by Continental/Laboratories Medica, SARL, (''CLM''), located at Centre Nepture, Rue des Maraichers, 33260 La Teste, France.

The application states that the trade name is used in connection with soap. The particular cosmetics sold under the Trade Name include:

Lait ''FAIR & WHITE'' (Lightening milk)
Gel-creme ''FAIR & WHITE'' (Cream gel)
Gel actif plus ''FAIR & WHITE'' (Active lightening gel)
Creme ''FAIR & WHITE'' (Lightening cream)
Serum Eclaircissant ''FAIR & WHITE'' (Lightening Serum)
Soap ''FAIR & WHITE''

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before September 18, 2001.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Washington DC 20229 (202–927–2330).

Dated: July 17, 2001.

George F. McCray,

Acting Chief, Intellectual Property Rights Branch.

[FR Doc. 01–18162 Filed 7–19–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: ''Labo. Derma''

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C.1124), of the trade name ''Labo. Derma,'' used by Continental/Laboratories Medica, SARL, (''CLM''), located at Centre Nepture, Rue des Maraichers, 33260 La Teste, France.

The application states that the trade name is used in connection with soap. The particular cosmetics sold under the Trade Name include:

Lait ''FAIR & WHITE'' (Lightening milk)

Gel-creme ''FAIR & WHITE'' (Cream gel)

Gel actif plus ''FAIR & WHITE'' (Active lightening gel)

Creme ''FAIR & WHITE'' (Lightening cream)

Serum Eclaircissant ''FAIR & WHITE'' (Lightening Serum)

Soap ''FAIR & WHITE''

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before September 18, 2001.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Washington DC 20229 (202–927–2330).

Dated: July 17, 2001.

George F. McCray,

Acting Chief, Intellectual Property Rights Branch.

[FR Doc. 01–18164 Filed 7–19–01; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 66, No. 140

Friday, July 20, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms From Indonesia: Final Results of Antidumping Duty Administrative Review

Correction

In notice document 01–17626 beginning on page 36754 in the issue of Friday, July 13, 2001, make the following correction:

On page 36754, in the second column, the **EFFECTVE DATE:** ''August 13, 2001'' is corrected to read ''July 13, 2001''.

[FR Doc. C1–17626 Filed 7–19–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
July 20, 2001

Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Allowance System for Controlling HCFC Production, Import and Export; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6929–9]

RIN 2060–AH67

Protection of Stratospheric Ozone: Allowance System for Controlling HCFC Production, Import and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is seeking comment on a proposed allowance system to control the United States (U.S.) production and consumption of class II controlled substances, the hydrochlorofluorocarbons (HCFCs), in accordance with U.S. obligations under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol). Under the Protocol, the U.S. is obligated to limit HCFC consumption (defined by the Protocol and this document as production plus imports, minus exports) under a specific cap, which will be reduced in a step-wise fashion over time. The U.S. is also a signatory to amendments to freeze HCFC production on January 1, 2004. EPA published an Advance Notice of Proposed Rulemaking (ANPRM) on April 5, 1999, laying out a variety of options for developing an allowance system. Having fully considered comments on the ANPRM, EPA is today proposing an HCFC allowance system, similar in many respects to the class I allowance system in place before January 1, 1996. Instituting such a system for HCFCs would allow EPA to ensure that the U.S. maintains compliance with the Protocol caps, while providing certainty and predictability to allowance holders. In addition, the Clean Air Act (CAA) requires EPA to establish an allowance system for HCFCs.

A slightly different version of this document was signed on December 28, 2000, by then Administrator Carol Browner. It was sent forward to the **Federal Register** and made available on the EPA Web site. It was not published in the **Federal Register**, but rather was recalled to EPA for review by the incoming Administration. In the interim, EPA was alerted to some potential discrepancies in baseline allocations; this led to the discovery that the tracking databases manifested some correlation errors. EPA reviewed all paper records to determine accurate baseline numbers, and the corrected numbers are included in this document.

DATES: Comments on this proposed rule must be received on or before September 4, 2001, unless a public hearing is requested. Comments must then be received on or before 45 days following the public hearing. Any party requesting a public hearing must notify the Stratospheric Ozone Protection Hotline listed below by 5 p.m. Eastern Standard Time on July 30, 2001. Following the period for requesting a hearing, you may call the Stratospheric Ozone Protection Hotline to find out whether a hearing will be held, and if a hearing is held, the date and location it will take place.

ADDRESSES: Comments on this proposed rule should be submitted in duplicate to: The Air and Radiation Docket (6102), Air Docket No. A–98–33, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Hotline at 1–800–269–1996.

Materials relevant to this rulemaking are contained in Docket No. A–98–33. The Docket is located in Room M–1500, First Floor, Waterside Mall at the address above. The materials may be inspected from 8 am until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Vera Au, EPA, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, (202) 564–2216 or the Stratospheric Protection Hotline at (800) 296–1996.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The HCFC allowance allocation system would affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing.	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers	.....	.....	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas importers	.....	.....	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Urethane and Other Foam Product (Except Polystyrene) Manufacturing.	326150	3086	Insulation and cushioning, foam plastics (except polystyrene) manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine these proposed regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Abbreviations and Acronyms Used in This Document

Act—Clean Air Act
ANPRM—Advance Notice of Proposed Rulemaking
Article 2 countries—industrialized countries
Article 5 countries—developing countries
CAA—Clean Air Act
Cap—limitation in level of production or consumption
CFC—chlorofluorocarbon
CFR—Code of Federal Regulations
EPA—Environmental Protection Agency
FDA—Food and Drug Administration
HCFC—hydrochlorofluorocarbon
NASA—National Aeronautics and Space Administration
ODP—ozone depletion potential (CFR 40, Part 82)
ODS—ozone-depleting substance
Party—Signatory country to the *Montreal Protocol on Substances that Deplete the Ozone Layer*
Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*
SBREFA—Small Business Regulatory Enforcement Fairness Act
SNAP—Significant New Alternatives Policy
UNEP—United Nations Environment Program

U.S.—United States

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I. Background

A. How Does the Montreal Protocol Phase Out HCFCs?

Signatory countries that are Parties to the international agreement called the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol) identified HCFCs as transitional substitutes for CFCs and other more destructive ODSs during their second meeting in London in 1990. At the Parties' fourth meeting in Copenhagen in 1992, a detailed phaseout schedule for HCFCs (listed in Annex C, Group I of the Protocol) was created. The Parties established a cap on the consumption of HCFCs for developed countries, or what the Protocol refers to as Article 2 countries, at the same meeting. Note that consumption is defined by the Protocol as production plus imports minus exports. The cap on HCFC consumption for Article 2 countries went into effect on January 1, 1996, and was derived from the formula of 3.1 percent (reduced to 2.8 percent at the seventh meeting of the Parties) of a Party's CFC consumption in 1989, plus the Party's consumption of HCFCs in 1989. This formula puts the current U.S. cap for HCFC consumption at 15,240 ODP-weighted metric tons. The Parties to the Protocol then created a schedule for the gradual reduction and eventual phaseout of the consumption of HCFCs by 2030. The Copenhagen Amendments to the Protocol call for a 35 percent reduction of the cap in 2004, followed by a 65 percent reduction in 2010, a 90 percent reduction in 2015, a 99.5 percent reduction in 2020, and a total phaseout in 2030. The U.S. must, at a minimum, comply with this phaseout schedule under the Protocol.

A freeze on HCFC production for Article 2 countries was agreed to at the eleventh Meeting of the Parties in 1999. This level of production is derived from the average of the Party's consumption cap (2.8 percent of a Party's CFC consumption in 1989, plus the Party's HCFC consumption in 1989) and the result of the same formula for production (2.8 percent of the Party's CFC production in 1989, plus the Party's HCFC production in 1989). The cap for the U.S. for the HCFC production freeze is 15,537 metric tons with each different HCFC chemical being weighted according to its ODP. The ODP of a chemical is determined according to its ability to destroy ozone molecules in the stratosphere. The higher the ODP, the more destructive the chemical is to stratospheric ozone.

EPA was petitioned by environmental organizations and industry groups in 1993 to phase out the most ozone-depleting HCFCs first (58 FR 65018, December 10, 1993; 58 FR 15014, March 18, 1993). Based on the available data at the time, EPA determined that the U.S. could meet, if not exceed, the required Protocol reductions by the specified dates through a chemical-by-chemical phaseout. Therefore, the U.S., as authorized under the CAA, implemented a phaseout schedule carried out on a chemical-by-chemical basis for HCFCs (58 FR 65018), which was intended to meet or exceed the Protocol reductions required. U.S. implementation of the HCFC phaseout is described below in section I.B of this document.

B. How Does Title VI of the CAA Amendments of 1990 Phase Out HCFCs?

Section 605(c) of the CAA Amendments of 1990 requires the Administrator to promulgate, by December 31, 1999, regulations phasing out the production, and restricting the use of, class II substances, in accordance with the schedule in that section and subject to any acceleration of the phaseout of production under section 606. Section 605(c) further states that the Administrator shall promulgate regulations to ensure that the consumption of class II substances is phased out and terminated in accordance with the same schedule. The original phaseout schedule established in the Act has since been accelerated as authorized under section 606 and is outlined below.

Section 605 of the Act established the original U.S. phaseout schedule for class II substances. Section 605(a) states that, ''Effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance: (1) Has been used, recovered and recycled; (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; or (3) is used as a refrigerant in appliances manufactured prior to January 1, 2020.'' Section 605(b) states that, ''Effective

January 1, 2015, it shall be unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year. Effective January 1, 2030, it shall be unlawful for any person to produce any class II substance.'' This phaseout schedule has since been accelerated under authority of Section 606.

Section 606(a) specifically requires the Administrator to promulgate regulations accelerating the phaseout of production and consumption of ozone-depleting substances, ''if (1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects, (2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable * * *, or (3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this title.''

Thus, section 606(a)(3) requires EPA to accelerate the phaseout to conform to any acceleration under the Protocol. In addition, section 614(b) provides that in the case of a conflict between Title VI of the Act and the Protocol, the more stringent provision shall govern. Based on scientific evidence that losses of stratospheric ozone were occurring more rapidly than anticipated, the Parties accelerated the phaseout of class I substances and established the phaseout schedule for class II substances at the fourth Meeting of the Parties in Copenhagen in 1992.

Pursuant to authorities provided by Title VI, EPA amended its regulations on December 10, 1993 (58 FR 65018) to provide for these accelerations. Targeting the phaseout set by the Protocol, EPA chose to phase out production and consumption of HCFCs on a chemical-by-chemical basis, beginning with those with the highest ODP. EPA accelerated the phaseout of production and import of HCFC–22, HCFC–141b and HCFC–142b, the three HCFCs with the highest ODPs. Specifically, EPA's rule bans the production and import of HCFC–141b as of January 1, 2003. HCFC–141b has an ODP of 0.11. The production and import of HCFC–142b, with an ODP of 0.065, and HCFC–22, with an ODP of 0.055, are prohibited effective January 1, 2010, except for use in equipment manufactured prior to January 1, 2010. Beginning January 1, 2020, the production and import of HCFC–142b and HCFC–22 are banned. Production and import of the remaining HCFCs will be prohibited beginning January 1, 2015, except as a refrigerant in equipment manufactured before January 1, 2020. All HCFCs will be completely phased out by January 1, 2030. Because HCFC consumption did not approach the Protocol cap for the U.S. during mid-1990, EPA did not at that time establish an allocation system for class II substances, as it did for class I substances.

Section 605(d) of the Act speaks to exceptions to the original phaseout schedule for HCFCs. Beginning in 2030, EPA can authorize up to 10 percent of the baseline per year for production of class II substances for medical products considered essential by the U.S. FDA and for which no safe and effective alternative has been developed and approved. In addition, EPA can authorize use of these quantities beginning in 2015 as an exception to the use restrictions contained in 605(a). EPA can authorize this limited amount of production and use, to the extent consistent with the Protocol, if FDA, in consultation with EPA, determines that it is necessary. In addition, beginning in 2015, and continuing up until 2030, EPA may authorize production of up to 110 percent of the baseline per year solely for export to and use in developing countries, referred to as Article 5 countries in the Protocol. This production is intended to be solely for the purpose of satisfying basic domestic needs of the importing developing country. Between 2030 and 2040, no more than 15 percent of the baseline can be produced annually for export to Article 5 countries. Section 605(d) does not permit any production for export to and use in Article 5 countries after January 1, 2040.

Per section 602(b) of the Act, EPA published a list of class II substances in 40 CFR part 82, subpart A, appendix B. All HCFCs fall into one grouping under class II controlled substances, and, since publication of the initial list, no new class II substances have been added to the list.

Section 602(e) requires EPA to assign numerical values representing the ODP of all class II substances; Section 602(e) further states that, ''Where the ozone depletion potential of a substance is specified in the Montreal Protocol, the ozone depletion potential specified for that substance under this section shall be consistent with the Montreal Protocol.'' Appendix B to part 82, subpart A in the regulatory text of this document lists the ODPs for all class II substances as currently specified by the Protocol. Note that some of the ODPs listed under Appendix B to Part 82, Subpart A of this document vary slightly from those listed under the current Appendix B to 40 CFR part 82, subpart A, due to revisions of those ODPs under the Protocol since May 10, 1995. Today's document proposes to amend the list of ODPs currently presented in 40 CFR Part 82, by reflecting the current Protocol list. Unless there are future revisions of the ODPs for class II substances under the Protocol, entities involved in the HCFC market can expect to use the ODPs listed in appendix B to part 82 subpart A of this document for any ODP-weighted calculations that may be necessary as part of an HCFC allowance system.

Section 607(b) of the Act requires EPA to permit the transfer of any class I or class II allowances, within each group or class, on an ozone depletion potential (ODP)-weighted basis. In allowing transfers, under section 607(a) of the Act, EPA must ensure that ''the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions.'' In other words, transfers cannot be made at a 1:1 ratio. Under the class I allowance system, EPA required an offset of one percent in any U.S. transfer to achieve the environmental benefit required by section 607. Those transfer requirements are set forth in 40 CFR part 82, subpart A, § 82.12 (60 FR 24970, May 10, 1995). Transfers of class II allowances between entities and inter-pollutant transfers on an ODP-weighted basis, along with an appropriate offset, are addressed under Section II.I.8 of today's document.

Section 616 of the Act states that the U.S. may transfer allowances to another Party, under certain conditions. Few countries currently have a system in place for allocating, trading and expending HCFC consumption allowances. As discussed in today's document, differences exist between the manners in which the Protocol and the U.S. have structured their respective HCFC phaseout systems. In addition, the Protocol language in paragraph 5 bis of Article 2 restricts the U.S. from trading away HCFC consumption to another Party because the U.S. per capita consumption of CFCs in 1989 was well above the per capita limit set by the Protocol for transferring HCFC consumption. A trading regime similar

to that implemented by EPA for transferring class I production allowances (40 CFR 82.9) (60 FR 24970, May 10, 1995), however, is possible, since the Parties established a cap on HCFC production for Article 2 countries during the eleventh meeting of the Parties in 1999. A proposed system for international trades of production allowances of class II substances is discussed in Section II.I.5 of this document.

Reporting requirements mandated in section 603 relative to HCFCs are currently in place in 40 CFR 82.13(n) and (o).

C. How Is Today's Document Arranged?

Because this proposed rulemaking follows an ANPRM on which we have received comments, we both respond to those comments and outline the provisions EPA is proposing today. The document is divided by issues. For each issue, we outline options presented in the ANPRM, discuss any relevant comments we received, then present and request comment on the related provision proposed by EPA. Next we propose several provisions that have arisen since the ANPRM was published and request comment on these provisions. Following these sections, we summarize the complete proposal. Proposed regulatory text follows this preamble.

It should be noted that the regulatory text of the class II allowance allocation system is found in the definitions of § 82.3, as well as the new sections being proposed today, §§ 82.15 through 82.24.

In this proposed rulemaking, the word ''you'' may be interpreted as ''producer'', ''importer'', or ''exporter'', depending on the situation under discussion.

II. Response to Comments on the April 5, 1999 ANPRM

Section 607 of the Act requires EPA to issue allowances for the production and consumption of class II substances. With this document, EPA is proposing an allowance system, similar in many respects to that of the class I system, with an allocation of baseline allowances, transfer capability, appropriate exemptions, and recordkeeping and reporting requirements. The proposed allowance system would ensure that U.S. consumption of class II substances does not exceed the consumption cap (currently at 15,240 ODP-weighted metric tons to be reduced over time) agreed to under the Protocol, and that U.S. production of class II substances does not exceed the production cap of 15,537 ODP-weighted metric tons agreed to at the eleventh Meeting of the Parties in 1999. It is important to remember when reading this proposal that consumption in the context of the Protocol, the CAA, and EPA regulations implementing Title VI of the CAA, does not mean use, but instead, represents a formula: *Production + Imports − Exports=Consumption.* When we speak of consumption allowances, then, we are referring to allowances for the calculated amount of production plus imports, minus exports.

For the class I substances, EPA considered many methods for achieving the required reductions that were agreed to under the Protocol (53 FR 30566, August 12, 1988). The approaches distinguished between economic incentives and engineering controls or bans. EPA concluded that the most economically efficient, market-based, and relatively simple to administer system for achieving the Protocol's required reductions for class I ODSs was a marketable allowance system. EPA established such a system for the class I ODSs, which proved highly successful. By January 1, 1996, the production and import of class I substances (other than methyl bromide, slated for phaseout in 2005) were completely phased out, except for narrow exemptions granted by the Parties to the Protocol. Anecdotal evidence from producers and importers indicated that the reduction steps and phaseout of class I ODSs through the allowance system was smooth and had minimal economic impact.

A. When Would the Allowance System Go Into Effect?

In the ANPRM, EPA considered an approach whereby an allowance system for class II substances would only become effective if a certain threshold (i.e., a certain percentage of the total U.S. cap set by the Protocol for class II substances) were reached or exceeded. However, the U.S. HCFC consumption in 1998 jumped to 92 percent. This percentage had been discussed in the ANPRM as a possible threshold that would allow for implementation of the allowance system. Because the average consumption was up to 95.5 percent of the cap by mid-1999, EPA believes we reached and could surpass that threshold unexpectedly. Therefore we are not proposing a threshold point.

Since publication of a final rule is expected during the last quarter of 2001, the requirements of the HCFC allowance system would likely take effect the quarter beginning January 1, 2002. EPA requests comment on any impact of allocating HCFC allowances for less than four quarters of 2002, if necessary, to ensure that EPA remains below the U.S. annual consumption cap. In this event, EPA would propose to allocate the remaining quarters of each entity's allowance allocation for 2002, unless that entity has exceeded past quarters of its allocation during 2002. In the case of an entity having exceeded the relevant quarter(s) of its allocation for 2002, the exceedance would be subtracted from the remaining quarters on a pro rata basis. EPA requests comment on this proposed HCFC allocation for the remaining quarters of 2002, if necessary. EPA also requests comment on the time needed to implement the new recordkeeping and reporting requirements, given their similarity to the class I recordkeeping and reporting.

B. What Types of Allowances Would Be Available?

Under the control system for class I substances, EPA created a unit of measure called an allowance. An allowance, for a class I substance, represented the marketable rights and privileges granted to a company to produce or import a specific quantity of that class I substance. Under the class I allowance program, there were two types of allowances: production allowances and consumption allowances. One allowance in the regulatory program for class I substances was equal to one kilogram of an ODS.

Under the class I phaseout regulations, a company was required to expend both production and consumption allowances to be able to produce. To be able to import a class I controlled substance, a company was required to expend consumption allowances (see 40 CFR 82.4). After proper documentation was presented to EPA reflecting an export of a class I controlled substance, consumption allowances were refunded or returned to the exporting company for future use (see 40 CFR 82.10).

In the ANPRM, EPA discussed two options: Allocating both production and consumption allowances, to be expended in the same manner as those in the class I system, as discussed above; and allocating only a consumption allowance, whereby one consumption allowance would be used to produce or to import one kilogram. One consumption allowance would be returned per kilogram exported.

Twelve commenters addressed this issue, with ten of the twelve favoring consumption allowances only. The proponents cited simplicity, and thus decreased regulatory burden. One commenter had no preference; however, the commenter stated that whichever type of allowance is used should be flexible enough to accommodate any

changes arising from ongoing international negotiations. Another commenter expressed a preference for production and consumption allowances, since this system worked well for class I substances; the commenter also felt that implementation of a proven and familiar system would promote simplification.

One commenter claimed that the use of two types of allowances could artificially alter the marketplace if capacity in the United States was underutilized but companies were not allowed to use other allowance holders' unused production rights for import of the class II substances domestically. This same commenter claimed that it would be equally a problem if import rights could not be used to obtain class II substances from a domestic supplier if the production capacity were available. EPA believes that the continued use of both allowances will not result in marketplace disruption. Under the class I system, companies that produced and imported were granted production and consumption allowances to continue producing and importing in response to market fluctuations; rather than disrupting the marketplace, the allowance system allowed market forces to prevail. EPA believes that import rights would not be necessary to obtain class II substances from a domestic supplier; a U.S. importer could purchase class II substances from any domestic supplier without using allowances. The Agency tried to assign baseline allowances as closely representative of each company's production and consumption as possible.

EPA considered the benefits of using one kind of allowance, the consumption allowance, and found that, on its face, such a system would be administratively easier. However, at the 1999 Beijing meeting of the Parties to the Protocol, the Parties agreed to a cap on production, in addition to the current cap on consumption of class II substances. This will require that EPA allocate both production and consumption allowances.

Additionally, because the majority of companies to whom allowances will be allocated in this action are familiar with expending, trading, reviewing, and reporting allowances according to the class I system, staying with the known and proven method is in many ways simpler for the companies. For example, reporting forms would not change significantly, negating the need to re-learn calculation and reporting of allowances.

For these reasons, EPA proposes to use both production and consumption allowances in its class II allocation system. EPA seeks comment on including both production and consumption allowances in a class II allowance allocation system. EPA also seeks input from commenters on the potential value of an allowance, taking into account the differing values of each HCFC and the proximity in time to that HCFC's phaseout.

C. What Would Be the Unit of Measure for Allowances?

In the class I allowance system, EPA assigned each allowance a value of one kilogram of a class I substance. To produce or import, allowances were expended by kilograms. Because ODSs have different potentials to cause ozone depletion, numbers are assigned to each chemical according to the ODP assigned by the Parties, calculated on the basis of CFC–11 having a potential of one (1.0). Since each chemical has its own ODP, any trades that took place between class I chemicals took into account the difference in ODPs, weighting the resulting allowances accordingly.

In the ANPRM, EPA discussed two options for the unit of measure to be used in allocating allowances and implementing the class II allowance system. One option is to retain the class I allocation and tracking on an absolute chemical-by-chemical basis, which relies on ODP-weighting for any inter-pollutant transfers that may occur. Expending, reporting and tracking of allowances would also be on a chemical-specific basis, with any trades between chemicals reflecting the differences in ODPs.

The second option for an allowance unit of measure discussed in the ANPRM was an ODP-weighted unit, tied to no specific chemical. To expend allowances, you would determine the chemical to be produced or imported, multiply it by its ODP and subtract the result from the total allowance units.

EPA received fourteen comments on the unit of measure to be used in allocating and tracking allowances. Ten of the commenters favored an ODP-weighted system, primarily due to the flexibility they believed it would allow. They argued that such a system would simplify transfers, respond to the needs of the marketplace without added burden, and provide for more trading. Three commenters stated their preference for an absolute chemical-by-chemical basis for allocation and transferring. One of those commenters believed that the class I system worked well on a chemical-by-chemical basis and that extending it to the class II system would likely succeed. One of the three commenters claimed that an entity should not be able to trade HCFC–141b for HCFC–22, because they serve two distinct and non-interchangeable markets. The same commenter stated that EPA could allow for revisions after the 2003 phaseout of HCFC–141b. Another of the three stated that both methods are flexible with no real difference, but expressed a preference for chemical-specific allocation. One commenter indicated no preference for either unit of measure but emphasized the importance of a flexible inter-company trading scheme.

One of the commenters who favored the ODP-weighted system elaborated that reporting would still need to happen on a chemical-by-chemical basis and that, should the 2003 phaseout of HCFC–141b result in a reduction greater than 35 percent, EPA should ensure that total allowances available in 2004 be at the 65 percent level.

After reviewing the comments and analyzing the potential outcomes in using each unit of measure for allowances, EPA is proposing to institute a chemical-by-chemical absolute kilogram system for allocating and transferring allowances. The baseline allocation for each company would be the total or a percentage of the number of kilograms of each chemical produced and consumed during the baseline year. To ensure compliance with the requirements of trading and to be able to report accurately to the Parties to the Protocol on production and importation of each of the class II substances, EPA would need allowance holder reports that included the kilograms of specific chemicals for which allowances are traded and expended. Tracking the associated chemicals, along with its associated ODP weighting, is imperative for reasons described below.

As noted in the Background section of today's document, the U.S. is slated to phase out HCFC–141b in 2003, HCFC–22 and HCFC–142b in 2010 (with some exceptions), and the remaining HCFCs in 2015 (with some exceptions). A complete phaseout is required in 2030. Because the U.S. is making reductions in class II substances by phasing out chemicals, EPA will need to have in its database the baseline allocation of kilograms of each of the chemicals as they are being phased out. On the first HCFC phaseout date of 2003, those companies that received baseline consumption allocations (or received a permanent baseline transfer) (see section II.I.7 of this document) of HCFC–141b would subtract that portion from their total consumption allocation. If permanent inter-pollutant trades had been made, an amount equal to the

ODP-weighted kilograms of baseline HCFC–141b allowances that had been received in the transfer would be deducted from the baseline allocation. Similarly, the person who transferred HCFC–141b permanent baseline allowances to someone else would no longer be responsible for deducting them from their allocation. That should have happened when the trade was made.

The same would occur in 2010 and 2015 for the relevant chemicals being phased out. Without chemicals associated with the various ODPs, EPA would be unable to enforce the regulation adequately. Furthermore, the U.S. would be unable to fulfill its obligation to report under the Protocol the volume of each chemical produced, imported and exported.

Under a chemical-by-chemical approach, allowances representing kilograms of the specific chemical expended would be the only information required, unless an inter-pollutant trade is made, as referenced above. The more rigorous reporting required under an ODP-weighted system would mean deciding which chemicals would be associated with which ODP units. This could both increase the regulatory and recordkeeping burden on companies and EPA and likely lead to inaccuracies. Blends could present further complication by requiring a calculation of the percentage of each HCFC in a substance (e.g., R–401A), that would need to be multiplied by its applicable ODP, then included in the total reported ODP and chemical produced or imported for a quarter. Reporting properly under the ODP-weighted system brings the reporter full-circle to a chemical-by-chemical analysis.

Proponents of an ODP-weighted system extol the ease of tracking and expending generic ODPs, as well as the advantages of avoiding an environmental offset for intra-company transfers, because an ODP-weighted system allows you to expend allowances for any chemical without actually trading internally. However, for the lesser ozone-depleting ODSs, such as HCFCs, EPA is proposing to impose an offset much lower than the one percent required in the class I system. (See discussion on proposed offset in section II.I.8 of today's action.) Therefore, the offset should not be a burden in transferring chemical-specific allowances.

Today's action thus proposes a chemical-by-chemical, absolute kilogram allocation system, whereby the amount of each HCFC produced and each HCFC consumed (production + imports − exports) would require the expending of one (1) allowance for one (1) kilogram of a specific substance. Inter-pollutant trades would involve calculating the ODP of each chemical and translating accordingly. EPA seeks comments on using an absolute chemical-by-chemical approach as presented above for implementing a class II allowance system, as well as on alternatives, including the ODP-weighting scheme described above.

D. How Would Allowances Be Distributed Each Year?

In the ANPRM, EPA discussed three methods for allocating allowances: a one-time allocation, a changing allocation on a periodic rolling basis, and a changing allocation on a year-by-year basis. The first method allocates baseline allowances on a one-time basis; these allowances continue until the time each associated chemical is phased out, unless adjustments are necessary to meet required Protocol reductions. Any distribution system must take into account: the approach of U.S. accelerated phaseouts for individual chemicals (e.g., those for HCFC–141b, HCFC–22 and HCFC–142b); the step-wise reduction of the consumption cap as mandated under the Protocol; and the new production cap agreed upon by the Protocol Parties. For example, in 2003, all production and consumption allowances associated with the HCFC–141b baseline allocation would be subtracted from holders' allowances. The same would happen as other chemicals are phased out in the specified years. At each phaseout, EPA must determine whether the aggregate chemical-specific phaseouts to that date are equal or greater than the reductions required by the Protocol in those years. If chemical-specific reductions are less than the Protocol requirement, EPA would then need to reduce the percentage of baselines to be allocated accordingly.

The one-time allocation of allowances was the method followed in the regulatory program for class I substances. For class I substances, a specified historical quantity of allowances was allocated to listed companies as a baseline in the **Federal Register**. Allocating allowances for the full time period until a phaseout date for a particular chemical provides certainty and stability for the market. Assuming the regulatory program includes smooth procedures for trading allowances, the full-term allocation of allowances establishes the basis for a ''marketable permit'' system.

The second option considered was a system for re-calculating and re-allocating allowances on a ''rolling basis.'' This would essentially move the baseline forward in time so that the baseline would presumably be the most accurate reflection of the current HCFC market. Under this option, EPA would review data on the production, import and export of HCFCs on some periodic basis, establish a new baseline for each entity, and re-allocate the allowances accordingly. A re-allocation of allowances could require an amendment to the original list in the regulation of entities with their respective baseline allowances. Alternatively, an administrative mechanism could be established to re-allocate allowances automatically at regular intervals.

A final option discussed would involve re-allocating allowances on a year-by-year basis. Under the year-by-year approach, actual recalculation of baselines and re-allocations based on past year activity would take place prior to January 1 of each control period.

EPA received fifteen comments on the method of allowance distribution. All of the commenters favored allocating one time, such that allocations are consistent from control period to control period (except for reductions associated with phaseouts). One commenter stated that anything other than the one-time allocation would result in market uncertainty and complicate production planning processes. Another stated a dislike for using a rolling basis, because it encourages speculation, whereas a one-time allocation for the class I system was perceived as fair and unchanging.

EPA agrees with commenters on the disadvantages of using a rolling average. EPA believes that any rolling average allocation system would create administrative complications for both EPA and the regulated community, as well as introduce uncertainty into the market between periods when the allocation would roll over, and thus, change. The ability of producers, importers and exporters to plan for the longer term would also be hampered, and markets could be disrupted. EPA believes that if the regulatory system includes smooth procedures for trading allowances, shifts in demand and changes in market share will be addressed by individual companies, thus avoiding a need to re-allocate allowances. EPA chose not to propose a rolling average allocation system for these reasons.

EPA believes that re-allocating allowances on a year-by-year basis would create administrative complications for EPA and for the regulated community, similar to the reasons cited above regarding the rolling

basis allocation system. Consequently, EPA also chose not to propose allocations on a year-by-year basis.

EPA is proposing a baseline on a one-time basis, whereby the allowance allocations would remain consistent (or be moved through permanent trades) from control period to control period (one calendar year to the next), until each chemical is phased out via subtraction of its commensurate allowances, or until the percentage of baseline allocated is changed to ensure compliance with the Protocol cap. As in the class I allocation system, a baseline is based on one year of a company's production and consumption (as discussed in section II.F below). At the beginning of each year, EPA would notify each allowance holder in writing of the number and type of allowances it had for that control period. If the allowance holder believed there was a discrepancy in the number of allowances it should have for that control period, EPA would work with that entity to resolve the discrepancy. As under the class I system, the allowances for any control period can only be used during that control period and cannot be carried over into the following calendar year.

Because of uncertainties associated with current projections of actual reductions that will be realized through the 2010 phaseout of HCFC–142b and HCFC–22, EPA will likely need to re-evaluate allowance allocations prior to 2010, to ensure that the U.S. can meet the 65 percent reduction of the consumption cap required by the Protocol beginning in 2010. The least certain factor is the demand for these two chemicals after 2010 to be used in equipment manufactured before 2010. Neither the core regulations nor the baseline year would likely change, but the amount of allocations themselves could be adjusted on a pro rata or some other basis to account for any shortfall in reduction that might become imminent. Consequently, throughout the rule, we refer to specific allocation provisions as in effect until 2010. If EPA determines that the U.S. will meet its 65 percent reduction obligation in 2010 with the current allocation, then there may be no reason to adjust the percentage of baseline to be allocated, until it is necessary to re-evaluate them for the 2015 phaseout.

EPA is seeking comment on its proposal to distribute HCFC allowances on a one-time basis, to be adjusted accordingly as individual chemicals are phased out.

E. What Percentage of the Cap and What Percentage of the Baseline Would Be Distributed?

1. Consumption Allowances

As discussed in section I.A of this document, the current U.S. cap for HCFC consumption is 15,240 ODP-weighted metric tons. In the ANPRM, EPA considered a number of options for the percentage of baseline allowances to be allocated under the U.S. HCFC consumption cap. These options included 100 percent allocation under the consumption cap, 100 percent allocation of the baseline production and import, or any percentage under 100 percent. In the latter option, the remaining percentage could be allocated pro rata to those with production or importation activity in the baseline year, allowed to lapse by EPA to ensure a cushion if violations threatened to push the U.S. over its cap, or be set aside for some special situation allocation.

Because the sum of the individual companies' consumption baseline activity could fall under the 15,240-metric-ton consumption cap, the issue arises as to whether and how to allocate any remaining class II consumption allowances falling between the U.S. consumption cap and the sum of baseline consumption allowances (discussed in section II.F of this document). For example, if the year 1996 were chosen as the baseline for consumption allowances, this allocation would represent about 82 percent of the U.S. consumption cap, thus leaving open the question of how to allocate the remaining 18 percent, and also whether the remaining 18 percent should be allocated in its entirety. This remaining percentage, or a lower percentage that would provide for a margin of error, could be auctioned. Alternatively, it could be added pro rata to the allocated baseline consumption allowances of those companies that participated in the HCFC market in the baseline year. It could alternatively be set aside to offset any potential overruns, or it could be used as a set-aside for a specific allocation purpose.

EPA received fifteen comments from producers, importers, and trade associations on how much of the cap should be allocated. Thirteen commenters supported a 100 percent allocation. They stated that the 100 percent allocation under the class I system was successful; therefore, we should anticipate the same allocation for a class II system being successful. Two commenters claimed that companies keep their own allowance buffers, so EPA did not also need to retain a buffer. One commenter believed that EPA's penalties are enough of an incentive to remain within one's allocation. Another commenter said that any amount less than 100 percent would create artificial shortages. One commenter believed no allowances should be held back for new entrants into the market, because there is no certainty these entities will emerge in the future.

EPA agrees with the commenters that a 100 percent allocation of baseline consumption is likely to maintain compliance with the cap. A 100 percent baseline allocation worked well for the class I allocation system, the penalties discouraged people from exceeding their individual allocations, and many allowance holders consciously maintained individual allowance buffers to ensure compliance.

The current aggregate of individual baseline consumption allowances anticipated to be allocated is below the cap of 15,240 ODP-weighted metric tons. EPA believes that it would be prudent to allow the remaining percentage below the cap to be set aside for allocations specifically for narrow situational exemptions from the baseline. As described in Section F below, EPA is proposing a narrow exception for certain new entrants into the HCFC imports market: those businesses newly importing after the end of 1997 and before April 5, 1999, when the publication of the ANPRM put all potential stakeholders on notice of this rulemaking. The necessary portions of the remaining percentage below the cap could be available for allocations to those new entrants according to historical data. See the detailed discussion of this proposed exemption and allocation in the section addressing baseline in Section F.

Given the good faith evidenced by compliance throughout the class I system, EPA believes that allocating the full amount of baseline allowances, as permitted under the Protocol HCFC cap for the U.S. is prudent and equitable to both the allowance holders and their customers. By this action, EPA is proposing to allocate 100 percent of the listed individual companies' consumption baselines under the class II cap established under the Protocol. In 2010, the date at which the Copenhagen Amendments to the Protocol call for a 65 percent reduction in HCFC consumption, as stated earlier in this proposal, it may be necessary to reduce each allowance holder's allocations accordingly, in order to maintain U.S. consumption of HCFCs within limits and avoid possible violation of the cap.

EPA is not proposing to allocate the difference between the Protocol

consumption cap and the aggregate of the baseline consumption allowances on a pro rata basis, for the following reasons. The remaining amount above the aggregate baseline and below the consumption cap is small, and EPA believes it can best be used to allocate allowances to companies described in section F as eligible late entrants, and possibly as credits for reductions of substitutes regulated under Title VI that are created as by-product(s) in the manufacture of an HCFC, as discussed in section IV.E. Because EPA is proposing to individually assign a baseline to each company based on its highest ODP-weighted consumption year among 1989, 1994, 1995, 1996, and 1997 (see section II.F), EPA emphasizes that companies should receive their highest recorded consumption from among those years.

EPA is seeking comments on its proposal to allocate 100 percent of baseline consumption activity. EPA also seeks comment on its proposal to allocate portions of the remaining amount above the aggregate baseline and below the consumption cap to companies described in section F as eligible recent entrants.

2. Production Allowances

The Parties to the Protocol at the recent meeting in late 1999 in Beijing adopted a production cap, in addition to the existing consumption cap. Using the formula agreed to by the Parties for calculating the cap, the U.S. production is frozen at 15,537 metric tons beginning January 1, 2004.

The recent Protocol amendment maintains the production cap at this level through the various phaseout years. Some anticipate that the Parties may make changes in future meetings, which would likely reduce production in a step-wise fashion. If such a change occurs, EPA will amend its regulation to reflect the Protocol requirements.

In the case of production allowances, 100 percent of production activity in the aggregate of all baseline consumption years, as discussed in section II.F. below, is below the production cap allowed by the Protocol. EPA can allocate 100 percent of the production in the baseline year and remain in compliance with the Protocol. The aggregate allocation will equal less than 100 percent of the production cap allowed by the Protocol.

Because production is currently frozen at a constant level that will continue over time, EPA is proposing that entities with baseline production allowances could produce the phased-out HCFC following the respective phaseouts, using export production allowances, for export only to Parties listed in Appendix C as having ratified the Copenhagen Amendments. These entities would be allocated their full production baseline for that chemical in export production allowances, for export only. Following individual HCFC phaseouts, 15 percent of production baseline for that chemical is reserved for export to Article 5 countries to be used for their domestic needs. The manner in which these post-phaseout production allowances for export would be allocated and expended is discussed below in Section II.G.

EPA did not discuss a detailed process for allocating production allowances in the April 1999 ANPRM, because the production freeze had not yet been adopted by the Parties. Therefore, there are no comments in response to the ANPRM on this issue.

F. How Would EPA Establish an Equitable Baseline?

In developing the regulatory program for class I controlled substances, EPA collected information on the amounts of each class I substance produced, imported, and exported during a given calendar year that was established as a baseline in accordance with the CAA. EPA collected the data by publishing two notices in the **Federal Register** under authority of section 114 of the Act (52 FR 47489 (December 14, 1987) and 55 FR 49116 (November 26, 1990)). The data requested from U.S. companies included reports on production runs, quantities of feedstock chemicals used in production, bills of lading, invoices, and other documents for a specific calendar year. The data submitted to EPA was used to assign company-specific class I production and consumption rights (allowances) to companies.

The CAA does not prescribe one specific year to serve as the baseline for allowance allocations for class II substances. For class II substances, the definition of ''baseline year'' in the CAA is ''* * * a representative calendar year selected by the Administrator.'' EPA explored a variety of options for establishing a baseline for HCFC allowances, analyzing available historical data for each company's production and consumption activities (reported to EPA) to identify a representative proposed class II baseline. EPA has been collecting quarterly reports on all HCFCs produced, imported and exported from 1994 on. Reliable data is thus available for years between 1994 and the present. Accurate data also exists for 1989 due to information gathering EPA conducted for class I baseline determinations, as discussed above.

In the ANPRM, EPA discussed some of the multiple options for establishing baseline allowances for class II controlled substances. The familiar use of historical information from one year, using an average of multiple years, or using some type of formula for combining multiple years were all covered in the ANPRM. EPA stated its belief that the process of establishing the baseline should take into account, inter alia, the agreements by the Parties to the Protocol to control and phase out class II substances, the 1990 CAA Amendments, the regulations under Title VI of the Act governing the phaseout of class II substances, and the development of the current HCFC market in the U.S. In arriving at the proposed baseline years for HCFC allowances, we believe we have taken into account each of the legal and policy guides considered above.

It is important to review the recent history of public notification and participation related to development of a class II allowance allocation rule. During the two stakeholder meetings in January and February, 1998, EPA stated that it would not consider the year 1998 or later years in baseline calculations and allocations. A primary reason was that once public discussion on a potential allowance system began, companies had much to gain by significantly increasing 1998 and 1999 activity—or entering the HCFC import market during those years to have activity on record—and subsequently advocating the use of those years as baseline years. EPA's opening the process to the public should not give unfair advantage to some and allow artificial market changes and baseline increases based on anticipated profit potentials. Consequently, EPA announced its intention not to include 1998 or later years in baseline calculations at both stakeholder meetings, in its subsequent ANPRM publication of April 1999, and in individual discussions with stakeholders.

All seventeen commenters stated their preferences for establishing a baseline. One company preferred 1989 as the baseline year. Five commenters believe that 1998 is most representative of the HCFC market. Two companies stated that 1997 reflects the current situation. Two commenters preferred 1996, one of them leaving open the option of 1996 or 1997 or an average of both. The second of the two commenters preferred 1996, because they stated that 1997, 1998, and 1999 include uncharacteristically high production and import for many

companies. Another commenter cited the growing HCFC market as we transition away from CFCs, and claimed that using an earlier year than 1998, which was a year of particularly high consumption, would not accurately reflect the continuing transition away from CFCs.

One commenter suggested recent years on a weighted basis, giving as an example, 100 percent of 1997 consumption plus 50 percent of 1996 consumption. This commenter also suggested that in 1998, industry may have artificially increased consumption in response to early EPA stakeholder meetings exploring the possibility of an ANPRM on this topic. Therefore, this commenter believed only 50 percent of 1998 numbers should be used. Two commenters believed that a single year baseline is necessary, one to avoid excessive record compilation and processing and the other because an averaged allocation would not adequately reflect the continuing transition away from CFCs. Four commenters preferred the average of 1996–1998 if the averaging option were selected; one commenter selected an even weighting of the years 1989, 1992, and 1995.

EPA did receive one general comment on allocations, however. Three commenters believed that producers exiting the HCFC market early should be required to return the unused allowances to EPA for distribution among the remaining allowance-holders on a pro rata basis. EPA believes otherwise. Under today's proposal, the allowances granted to the various companies would be the companies' to do with what they will.

If a company decides to decrease production, or importation, from its baseline, EPA believes the market should drive the outcome, in that the company can choose to transfer its excess allowances for the year or let those allowances lapse, and thereby benefit the environment. One advantage of the one-time allocation favored by commenters is that it provides certainty to all the players. Having EPA taking allowances from those who decrease production or import from their baseline and re-distributing allowances to other allowance holders would disrupt the market forces. It would also defeat the environmental purpose of encouraging companies to move toward substitutes. Consequently, EPA is proposing not to re-distribute unexpended allowances resulting from a company's decision to decrease or stop its production or importation of HCFCs.

EPA believes that because it is allocating to entities who have had very different production and import histories, there is no one year that is representative for all companies. Picking only one year, regardless of the year, could disadvantage many. EPA's intent is to find the most representative baseline possible within the constraints of the consumption cap and production freeze. EPA disagrees with the comments opposing an averaging or formula of multiple years. Once a multi-year allocation is made, using a one-time, or permanent allocation would require no additional data compilation over a single-year system. Once a baseline is determined for each company, EPA is proposing that the baseline remain unchanged through the duration of the program, with allocation reductions made according to the phaseout schedule and necessary increases in reductions to ensure the U.S. meets the 65 percent and later Protocol step-wise reductions.

In reviewing the consumption figures for the years before 1994, EPA believes that only one year can reasonably be considered. With the Protocol signed and the CAA close to passage and enactment in 1989, EPA has accurate data for that year. Additionally, the year 1989 was designated as the baseline year used for the allocations of several of the class I substances (Groups III, IV, and V), thus providing a complete database of ODS production, import, and export (when combined, equaling consumption) activity during that year.

Reviewing the production and consumption data on HCFCs from the most reliable reporting years, EPA found a wide spectrum of years that benefitted different companies. Looking at the available information from 1989, 1994, 1995, 1996, and 1997, EPA calculated that if it allocated allowances to every company based on their individual highest ODP-weighted consumption year among those five years, the U.S. would be able to remain just under the Protocol consumption cap. Any producers or importers entering the HCFC market for the first time in 1998 or 1999 would not be eligible to receive an allocation, except for a situation outlined later in this section. However, under the proposed transfer provisions, such a company could purchase allowances from another company that held allowances.

As discussed earlier in today's action, EPA is proposing to allocate and track on a chemical-by-chemical basis. However, for purposes of arriving at the baseline, EPA examined total ODP-weighted consumption in determining the highest year for each company. That way, the highest number of ODP-weighted kilograms, rather than highest number of absolute kilograms, could determine the most beneficial allocation for each entity. Actual allocations will be distributed and tracked on an absolute kilogram, chemical-by-chemical basis for production and for consumption.

Using the individual baseline approach based on the highest ODP-weighted consumption year brings total U.S. consumption to a small percentage below the cap of 15,240 metric tons. Total ODP-weighted production, aggregated from production in each relevant individual baseline year as proposed, brings the U.S. to below the U.S. production cap of 15,537 metric tons. Because the consumption baseline years include the highest production for each producer, EPA believes that using the same baseline year for production for each company is still the most equitable. EPA's proposed production baseline and allocations would be in compliance with the new Protocol production cap.

In exploring baseline years after 1997, EPA believes it is possible that, as two other commenters have noted, recent years' consumption is inflated, due to stockpiling in anticipation of an impending rulemaking. EPA does not believe, as discussed above, that 1998, when we began publicly discussing an allocation system, can serve as a truly representative baseline year or as an equitable factor in a multi-year baseline. Instead, the escalating 1998 figures may reflect an effort by some to dramatically increase consumption not only to stockpile, but also to ensure a high HCFC allowance allocation for those companies in the hopes that 1998 or 1999 would be selected. Such an aggregate number would likely place the U.S. in violation of the Protocol cap.

EPA recognizes that, in assigning a year or years prior to 1998, those with their highest consumption falling in 1998 or 1999 would receive fewer allowances from EPA than their most recent consumption would reflect. However, with transfers of allowances and the ability to import used HCFCs, the transition could likely be made without significantly disrupting consumption trends. Additionally, data on increased 1998 and 1999 consumption, as compared to earlier years, seems to indicate significant stockpiling, which should allow customer demand to be met.

For these reasons and the fact that using the most recent years could skew the market and disadvantage those who did not significantly increase consumption in those years, EPA is not proposing to use 1998 production or consumption in the HCFC baseline

calculation. For similar reasons, and because complete data for the year 1999 will not be available during the drafting of this rule, EPA also does not propose to use 1999 as part of the calculation for baseline.

EPA is, however, proposing one exception to its policy to not use 1998 or later years as part of a person's baseline. EPA proposes to grant available HCFC consumption allowances to late entrants into the HCFC import market that meet the following qualifications: the HCFC import market is their primary source of business income; they began importing HCFCs after the end of 1997 but before the publication of the ANPRM on April 5, 1999; and they have accurately reported all relevant required quarterly import information to EPA prior to publication of today's proposal. Businesses meeting these qualifications would be eligible to receive consumption allowances based on a full year's data, if available. If a full year's data is not available because the entity has not been in business for a complete year by April 5, 1999, EPA proposes to extrapolate based on the available reports for one, two, or three quarters.

EPA believes that such new entrants into the market during that time would likely be small businesses whose owners and operators were unfamiliar with EPA's plans to begin work on an allowance allocation system for HCFCs until the ANPRM appeared in the **Federal Register** on April 5, 1999. These businesses that began importing HCFCs after 1997 and before the ANPRM publication date might have had less access to information from standard industry sources and might not have heard the announcements at the stakeholders' meetings; they might not have had reason to know of an imminent rulemaking allocating allowances based on historical production and importation. In a case where a person, acting in good faith and prior to the publication of the ANPRM, established a business whose primary income was derived from importing HCFCs, EPA believes that it is appropriate to make an exception. Once public notice was given via the published ANPRM, businesses that desired an allocation of HCFC allowances would have known the risks of jumping into the business at this juncture. Prior to April 5, 1999, imperfect information left the door open for small new companies to observe the potential market in HCFCs and begin importing HCFCs as a new business. Therefore, EPA is today proposing to grant available allowances to any business who can successfully demonstrate that it meets these criteria. However, EPA will not allocate allowances in excess of the consumption cap. Although EPA does not anticipate an outpouring of new entrants who fit this description, to forestall the possibility of exceeding the cap as a result of allocations to new entrants, we will consider submissions on a pro rata basis, if necessary.

Through today's proposal, EPA requests notification from any business that fits the outlined criteria and wishes to request allowances by submitting a demonstration of eligibility during the 45-day comment period following publication of this proposal. This will allow EPA to process the submissions and include allocations for eligible new entrants in the final rulemaking. No submissions for eligibility will be accepted after September 4, 2001. To adequately demonstrate the eligibility of such a business, EPA requests the following information: records showing the date the first HCFC imports took place; business records showing that imported HCFCs are the primary source of the business's income; quantities (in kilograms) of each chemical imported; exporting country of each shipment; and port of entry of imported HCFC shipments, accompanied by bills of lading, invoices and Customs entry forms.

The Administrator will review only the complete submissions that meet the criteria outlined above. Incomplete submissions will not be considered. EPA will conduct a thorough review of the details of those submissions. The final rule will contain allowance allocations for new entrants that EPA has determined to be eligible.

EPA also considered the possibility of new entrants that entered or wish to enter the market following publication of the ANPRM in April of 1999. EPA believes that once the ANPRM was published, the public possessed adequate notice that an allocation system for HCFC allowances was in the development phase and that EPA was seriously discussing a period of historical data that would be used in the baseline designations. It was evident at that time that new entrants were unlikely to receive an allocation of allowances. Simultaneously, EPA emphasized its intention to phase out HCFCs in order to meet U.S. obligations under the Protocol and the CAA. Encouraging new companies to join the business after the ANPRM would counter the efforts of moving people out of HCFCs into more environmentally sound substitutes.

EPA believes that any new entrants following the ANPRM publication would not be precluded from entering the market, because they could purchase allowances from existing allowance holders who may not intend to use their full amount of allowances. They also have the opportunity to import used HCFCs through EPA's petition system or deal in substitutes to HCFCs, which would benefit the ozone layer and provide longer-term business security. Accordingly, EPA believes that the market will sufficiently allow for any new entrants after April 5, 1999, as appropriate.

It is important to note that, under any scenario, when the phaseout date for HCFC–141b is reached in 2003, all HCFC–141b import and production for domestic purposes will cease. Those who were not allocated HCFC–141b consumption allowances will not be affected in 2003, unless they had gained baseline allowances for HCFC–141b through a permanent trade (Section II.I.6-II.I.7). However, those who were allocated consumption allowances to produce or import HCFC–141b would no longer have annual consumption allowances associated with their baseline HCFC–141b activity, and thus have no authorization to produce or import HCFC–141b for domestic purposes (where both production and consumption allowances are necessary). EPA is proposing to allow production for export following phaseout, however, up to 115 percent of producers' HCFC–141b production baseline, as discussed below in Section II.G.

Any company that, through a baseline (or permanent) trade, received HCFC–141b consumption allowances associated with historic HCFC–141b consumption, would no longer have the consumption allowances associated with the baseline trade in 2003. However, that company's total baseline, for purposes of determining the amount of export production allowances and Article 5 allowances for which it would be eligible following the phaseout, would reflect the baseline trade.

In 2004, when the Protocol requires that the HCFC consumption cap be reduced from its current level by 35 percent, it is possible that holders of allowances for HCFCs other than HCFC–141b would be affected if the 35 percent reduction cannot be met. EPA does not intend to subtract both baseline HCFC–141b consumption allowances in 2003 and an additional 35 percent of the remaining consumption allowances in 2004. Instead, it intends, as laid out in its accelerated phaseout rule published December 10, 1993, to subtract the baseline HCFC–141b consumption allowances to fulfill the required 35 percent reduction. If a 35 percent reduction could not be achieved

through subtraction of baseline HCFC–141b consumption allowances, then EPA would need to reduce the remaining HCFC consumption allowances by the requisite percentage to achieve the full 35 percent reduction.

EPA wishes to clarify that allowances can only be allocated for which we were supplied verifying documentation, such as invoices, bills of lading, Customs documents, and/or canceled checks. Many companies supplied such information along with each quarterly report, and thus EPA had the information on record. We requested that companies without the information on file with EPA supply this information to us by mid-January of 2000, so that EPA could determine accurate production and consumption figures for purposes of allocating allowances. Allowance allocations, then, are based on verified production and consumption in each company's respective baseline year.

Additionally, allocations are listed in the proposal only for those companies that gave EPA permission to publish production and consumption figures for each HCFC in their baseline year. Because EPA considers individual company's production and consumption data to be Confidential Business Information, permission to publish these numbers is necessary.

EPA expects to receive additional verification from a small number of companies, permission from companies that have not yet permitted EPA to publish their potential allocation data, and new entrants as described above, before the final rule is completed and published. Consequently, additional companies and their allocations not in this proposal may be added to the final rulemaking and that potential allocation information would be reflected in the rulemaking docket.

EPA requests comment on its proposal to assign individual baseline years by company, using one of the years 1989, 1994, 1995, 1996, or 1997, in which the highest ODP-weighted consumption was accurately reported. EPA also seeks comment on its proposal to use data from the same year for production. EPA requests comment on allowing certain new HCFC importers established after 1997 and before April 5, 1999 to be eligible for allowances as discussed above.

G. Would Production for Export Be Allowed After Each Phaseout?

Because the U.S. adopted a different approach from the Protocol in phasing out HCFCs, i.e., chemical-specific phaseouts rather than by percentage, the continued ability to export to other countries after each HCFC is phased out becomes of interest. One factor driving foreign demand for HCFC–141b is the number of HCFC–141b projects being funded by the Multilateral Fund (MLF) that are intended to move Article 5 countries out of class I substances. The MLF was established by the 1992 London Amendment to the Protocol to enable developing countries to meet the requirements of the Protocol. The MLF helps pay for the incremental cost of projects that replace use of ODSs with ozone-friendly substances. Because HCFC–141b (ODP of 0.11) is intended to replace CFC–11 (ODP of 1.0) in most of these projects, the environmental benefit of these substitutions comes to a reduction of 0.89 in ODP weight per kilogram.

Another factor is the approach by which other developed countries are choosing to meet their Protocol reductions, i.e., by percentage (as outlined by the Protocol) rather than chemical-by-chemical (as in the U.S.). Consequently, there will likely be a continuing demand for HCFC–141b by Article 2 countries after the U.S. 2003 phaseout date for that chemical.

The decision by the Parties in Beijing in late 1999 to freeze production provides a vehicle for a suitable resolution to the export concern. In 2003, while production and import for domestic use of HCFC–141b is eliminated, production for exports and narrow domestic exceptions can continue at baseline levels. Because consumption allowances, necessary for production and importation, would no longer be available, production after January 1, 2003 of HCFC–141b for domestic sale or use would no longer take place. However, because production for export continues to be allowed under the Protocol production cap, EPA is proposing to allow production for export only to Parties listed in Appendix C (those who also have ratified the Copenhagen Amendments) after the phaseout of HCFC–141b on January 1, 2003.

Under the Montreal Protocol, 15 percent of production baseline would be available for export to Article 5 countries (listed in Appendix E) only for their domestic needs, while 100 percent of baseline of the phased-out chemical would be allowed for export to Article 2 or Article 5 countries, or any combination of the two. After all the export production allowances have been allocated, some of the production remaining between the aggregate export production allowances and the HCFC production cap could be allocated for production or import of HCFC–141b for space vehicle or defense needs, as discussed in Section III.B. Allowing an additional 15 percent of HCFC–141b production baseline for Article 5 countries ensures that developing countries will have adequate access to supplies to transition to class II ODSs before turning to non-ODP substances. The 15 percent of HCFC–141b production baseline for Article 5 countries is discussed in detail below.

1. Exports to Parties

Prior to each phaseout, EPA's allowance system would require that both production and consumption allowances be used for any production, with consumption allowances being returned when a chemical is exported. As with the class I allowance system, one kilogram of production allowance and one kilogram of consumption allowance would be expended to produce one kilogram of an HCFC. Under today's proposal, post-phaseout production could occur beginning January 1, 2003 up to 100 percent of HCFC–141b production baseline for export only to Parties listed in the third column of Appendix C (those who have ratified the Copenhagen Amendments). To distinguish between these post-phaseout production allowances and pre-phaseout allowances, EPA proposes calling the former ''export production allowances.''

Reporting provisions associated with production for export only after the relevant HCFC phaseout would require similar information and documentation as export reporting prior to a relevant phaseout. This requirement is outlined in the Recordkeeping and Reporting Section of today's proposal.

EPA requests comment on the proposed allocation of export production allowances equal to 100 percent of HCFC–141b production baseline, allowing production of phased-out HCFCs with these allowances for export only to Parties who have ratified the Copenhagen Amendments (Appendix C to Subpart A). EPA also requests comment on allocating some of the production remaining between the aggregate of export production allowances and the HCFC production cap for production or import of space vehicle/defense uses of HCFC–141b, as discussed in Section III.B.

2. Exports to Article 5 Countries

In the class I phaseout and allowance system, EPA allowed 15 percent of baseline to be produced after phaseout for export to Article 5 countries to satisfy their basic domestic needs. With the recent decision of the Protocol to freeze the production of HCFCs, the

Parties also decided to provide an additional 15 percent of baseline production for export to Article 5 countries. The 15 percent that EPA is proposing today would only be available for those HCFCs that have been phased out, would be over and above the production cap, and would differ from export production allowances in that exports could go only to Article 5 countries for their domestic need.

As in the class I system, Article 5 allowances would be expended, without accompanying consumption allowances, for production specifically for Article 5 countries. Because they are to be used specifically for the importing countries' basic domestic needs, these exports are not expected to compete with U.S. markets using substitutes.

EPA believes it is appropriate, following chemical-specific phaseouts, to permit production specifically for export only to Article 5 countries that may require the chemical to facilitate their transition to less ozone-depleting chemicals. In deciding to propose this approach, we have considered the current volume of U.S. exports to other Parties, the projected increased demand by Article 5 countries, the Protocol requirement that exports to Article 5 countries be used only for their domestic needs, and the precedent of allowing 15 percent of baseline production for export only in the class I system. EPA is proposing that 15 percent of each company's production baseline of phased-out HCFCs can be used for production for export only to any Article 5 country for their domestic needs, following the phaseout of each chemical, until 2030. For example, in 2003, when production and consumption allowances associated with HCFC–141b are eliminated, fifteen percent of HCFC–141b production baseline would be available after phaseout to enable HCFC–141b production for export to Article 5 countries for their domestic needs. As in the class I system, these post-phaseout production allowances would be called ''Article 5 allowances.''

EPA seeks comment on its proposal to allocate Article 5 allowances equal to 15 percent of a phased-out HCFC's baseline production after phaseout for export to Article 5 countries.

H. Would There Be Any Critical Needs Allowances?

EPA is proposing a narrow exception in Section III of today's action regarding continued production of HCFC–141b where necessary, for critical space vehicle and defense uses. A variety of criteria would need to be met for this exemption to be granted, e.g., a lack of availability of viable alternatives or substitutes. See Section III.B below for a detailed discussion.

I. Would I Be Able To Transfer Allowances?

In establishing the allowance program for class I controlled substances, EPA included provisions that permit the transfer of allowances. The provisions for trades and transfers of class I allowances are 40 CFR 82.9, 82.10, 82.11 and 82.12 as promulgated in the final rule published on May 10, 1995 (60 FR 24970). Today's document describes the many different types of transfers permitted for class II allowances, as well as other variations discussed in the ANPRM.

Under the current class I regulatory program, EPA is required to process all transfers of allowances within three working days from when EPA receives the request for an inter-pollutant or inter-company trade. Companies fax or send the request for a trade to EPA and within three working days EPA faxes a reply showing the new balance of unexpended allowances (See 40 CFR 82.12(a)(1), (b)(4)). EPA proposes to retain the above process schedule for class II trades and requests comment on the proposed process for requesting EPA approval of trades of class II substances and the three-day turnaround time for such requests.

1. Transfers Within Groups of HCFCs

To facilitate transfers among class II substances, EPA is permitted, under Section 607(b)(3) of the Act, to establish groups of HCFCs. Under such a framework, inter-pollutant transfers of allowances would be limited to chemicals within an assigned group. Class I controlled substances are listed in the Act in groups, and inter-pollutant transfers of class I allowances are restricted to transfers within each group. While class I substances are listed in groups in the Act, no such grouping exists for class II substances. One option discussed in the ANPRM was to establish HCFC groups based on each chemical's ODP. Another option was establishment of HCFC groups based on the U.S. phaseout dates. A third option would be not to group HCFCs at all.

Two of the eleven who commented on transfers indicated a preference for no grouping of HCFCs at all or for including all HCFCs in one single group. They both felt that grouping would reduce the flexibility necessary in inter-pollutant transfers. The remaining nine commenters did not address the grouping issues. Since transfers were limited to CFCs of the same group in the class I allowance system, allowance holders experienced some restrictions in their trading. EPA agrees that imposing a grouping system for HCFCs would unnecessarily restrict flexibility in inter-pollutant transfers.

EPA is not proposing to group the HCFCs. This will provide the greatest flexibility for allowance holders to transfer among chemicals.

2. Inter-Pollutant Transfers

Section 607(b) of the Act states that inter-pollutant transfers of ozone-depleting substance allowances shall be permitted. An inter-pollutant transfer is the transfer of an allowance of one substance to an allowance of another substance on an ODP-weighted basis. As an example, under the class I system, a company would transfer allowances for CFC–12 to allowances for CFC–115, taking into account ODP differences between the two chemicals. If a company wanted to transfer 1000 kilograms of their CFC–12 production allowances to CFC–115 production allowances, paperwork would be submitted with the following calculation: the 1000 kilograms of CFC–12 allowances are multiplied by the ODP of CFC–12 (1.0) and then divided by the lower ODP of CFC–115 (0.6), yielding 1667 kilograms of new CFC–115 production allowances minus the required offset. Section 607 of the CAA requires that any trade of ozone-depleting substance allowances result in a benefit to the environment. The offset is intended to fulfill this mandate.

Inter-pollutant transfers are sometimes called intra-company transfers or trades because a company might shift allowances internally from one substance to another to react to shifts in demand. Inter-pollutant transfers of allowances were fairly common for class I substances. There were an average of 95 inter-pollutant transfers for class I substances each year from 1992 through 1995.

For class II substances in the chemical-by-chemical allocation system proposed in section II.C, an example of an inter-pollutant transfer would be a transfer of 10,000 kilograms of HCFC–142b allowances for HCFC–141b allowances, which would result in 5,909 kilograms of HCFC–141b allowances because of the adjustment for the ODPs of the two chemicals. This calculation does not take into account the required offset for transfers as proposed and discussed in section II.I.8 of this document.

All eleven commenters advocated maximum flexibility in transfers. Two commenters were in favor of transfers with as little regulatory oversight as

possible. One felt no need for EPA permission prior to the trade, provided the actual amounts of individual HCFCs are shown in the quarterly reports.

EPA proposes to allow inter-pollutant transfers (or intra-company trades) in tandem with the proposed chemical-by-chemical system in section II.C above, similar to the program for the class I substances. As in the class I system, companies would fax or send the request for a trade to EPA and within three working days of receipt, EPA would fax a reply showing the new balance of unexpended allowances. EPA's oversight should ensure that the company making the transfer has the requisite number of unexpended allowances. EPA requests comment on the proposed inter-pollutant transfers (also referred to as intra-company trades) in tandem with the proposed chemical-by-chemical system, and the three-day turnaround time associated with such trades.

A major difference in the class II proposed system should be noted. Because the allowances for production and consumption fall away as of the phaseout date of an individual HCFC, inter-pollutant and inter-company trades among production and consumption allowances for that HCFC can no longer be made. For example, after HCFC–141b is phased out in 2003, a person cannot trade ODP-weighted HCFC–22 production allowances for HCFC–141b production allowances. No production or consumption allowances for HCFC–141b should exist (except for narrowly stated exemptions).

However, two new and separate sets of allowances—export production allowances and Article 5 allowances—would be available to that allowance holder once HCFC–141b is phased out. Export production allowances could only be used for production for export to countries that are Party to the Copenhagen Amendments. Article 5 allowances could only be used for production to export to Article 5 countries. Because HCFC–141b will be the only chemical with export production allowances and Article 5 allowances between 2003 and 2010, inter-pollutant trading of HCFC–141b would not be possible. Inter-company trades of each type of allowance could take place, to be used in the manner specified under that allowance.

3. Inter-Company Transfers

Another example of trades of class II allowances that EPA permits are inter-company transfers under Section 607(c) of the Act. Inter-company transfers are trades of allowances, for the same substance under a chemical-by-chemical system, from one company to another company. Under such a system, Company A would simply transfer its allowances for production of a class II substance to Company B who wished to have more allowances for production of that particular class II substance. The requisite offset would be deducted by EPA when processing the trade. It would be necessary for both companies to record and report the chemical(s) associated with that trade. The proposed chemical-by-chemical system (Section II.C) would eliminate any need for conversion in reporting the trade.

Of the eleven commenters in favor of maximum flexibility in transfers, two specifically recommended free inter-company trades.

EPA proposes to allow inter-company trades, with an environmental offset as described in Section II.I.8. EPA also proposes to process all transfer requests within three working days from when EPA receives the request, similar to the process used for the class I system. Companies fax or send the request for a trade to EPA and within three working days EPA faxes a reply showing the new balance of unexpended allowances.

4. Inter-Pollutant Transfers Combined With Inter-Company Transfers

Both inter-company and inter-pollutant transfers could be combined in the same transaction for class I substances, and EPA is planning to allow the same possibility for class II substances. Section 607(c) of the CAA states that EPA's transfer regulations for class I and class II substances shall permit combined inter-company and inter-pollutant transfers, subject to certain requirements. As an example of how this worked under the class I system, Company A would trade 35,000 kilograms of CFC–11 allowances to Company B who needed allowances to produce CFC–115. In the information submitted to EPA, the two companies would agree that Company A would deduct 35,000 allowances for CFC–11 from its balance and Company B would receive 58,333 kilograms of CFC–115, due to the ODP difference between the two chemicals. An additional 0.1 percent offset would be required in this calculation as discussed in Section II.I.8.

Under this combined system for class II substances in a chemical-by-chemical allocation system, a company that wishes, for example, to increase its production of HCFC–141b before the 2003 phaseout could: (1) Re-distribute its own allowances that have been allocated for another class II substance to HCFC–141b (inter-pollutant transfer); (2) purchase more HCFC–141b allowances from another company (an inter-company transfer); or (3) purchase more allowances from another company of a substance other than HCFC–141b and conduct a simultaneous inter-pollutant transfer for HCFC–141b production, making the related ODP adjustments (an inter-company/inter-pollutant transfer). After the 2003 phaseout of HCFC–141b, a company receiving export production allowances and Article 5 allowances for HCFC–141b could engage in inter-company transfers of those allowances, but could not engage in inter-pollutant transfers until 2010, when export production allowances and Article 5 allowances for HCFC–22 and HCFC–142b become available and thus, tradeable with the ones for HCFC–141b (Section II.I.2).

Only one commenter out of the eleven commenters discussing transfers singled out inter-pollutant transfers with inter-company transfers for special favorable mention. The remaining ten commenters generally advocated maximum flexibility in transfers without emphasizing inter-pollutant transfers with inter-company transfers.

EPA proposes to allow inter-pollutant transfers combined with inter-company transfers for class II substances, similar to what it allows in the system used for class I substances. EPA requests comment on its proposal to allow inter-pollutant transfers combined with inter-company transfers.

5. International Trades of Current-Year Allowances

Under the Protocol, international trades are recognized as a part of a process called ''industrial rationalization.'' In Article 1 of the Protocol, industrial rationalization is defined as ''the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures.'' International trades of production and consumption are permitted under the Protocol so Parties can consolidate the manufacturing of a chemical in order to be able to achieve economies of scale as demand shrinks. International trades of production and consumption allowances are permitted under EPA's current regulations for class I controlled substances (40 CFR 82.9(c)). The procedures for international trades involve more review than the procedures for inter-pollutant and inter-company trades.

The Protocol includes the following language in Article 2, paragraph 5 bis: ''Any Party not operating under paragraph 1 of Article 5 [an

industrialized country] may, for one or more control periods, transfer to another such Party any portion of its calculated level of consumption set out in Article 2F [pertaining to HCFCs], provided that the calculated level of consumption of controlled substances in Group I of Annex A [CFCs] of the Party transferring the portion of its calculated level of consumption did not exceed 0.25 kilograms per capita in 1989 and that the total combined calculated levels of consumption of the Parties concerned do not exceed the consumption limits set out in Article 2F. Such transfer of consumption shall be notified to the Secretariat by each of the Parties concerned, stating the terms of such transfer and the period for which it is to apply.''

The Protocol language in paragraph 5 bis of Article 2 discussed above clearly restricts the U.S. from trading away HCFC consumption to another Party. The U.S. per capita consumption of CFCs in 1989 was 1.28 kilograms, well above the 0.25 kilogram per capita limit for transferring HCFC consumption. However, the Protocol language allows the U.S. to potentially receive a transfer of HCFC consumption from another Party. Only two Article 2 countries, Norway and Poland, had a per capita consumption of CFCs in 1989 less than 0.25 kilograms. Thus, these are the only Parties from which the U.S. could potentially receive a transfer of HCFC consumption. EPA considered the likelihood of such international trades, and whether or not the establishment of provisions for class II international consumption trades is warranted.

During the eleventh Meeting of the Parties in 1999, with the adoption of a production cap, came the potential for transfers of production between Parties. The restrictions that exist for international consumption trades do not exist for production. Thus international production allowance trades may be of greater interest to U.S. entities.

Of the eleven commenters on transfers, only two addressed the issue of international trades. One commenter acknowledged that industrial rationalization is important and is a mechanism that tends to reduce overall consumption but stated that the absence of production allowances (comment submitted prior to Protocol adoption of production cap in late 1999) would mean that international trades must take place on a different basis than that established for class I substances. This commenter suggested that the material for U.S. consumption be produced ''under license'' in another country but was unsure how this would fit with international and foreign country regulations. The commenter's concern regarding the lack of production allowances would be answered by today's proposal to establish production allowances in addition to consumption allowances (Section II.B). The second commenter stated that although the Protocol supports such international trades, the limitations are severe and clearly discriminatory to multinationals operating in developed countries. EPA believes that this comment gives an indication of the possibility of international trades of consumption allowances occurring in view of the limitations imposed by the Protocol.

In light of the constraints on international trade of HCFC consumption described above, EPA is not proposing any provisions for international trades of consumption allowances. If the U.S. cannot transfer its consumption allowances to any other Party, and the only nations from which it could receive consumption rights to import are Norway and Poland, EPA believes that it appears unlikely that any such consumption trade would be desired or beneficial. Consequently, EPA has not included any such provisions in this proposal. EPA requests comment on its decision not to include provisions for international trades of consumption allowances. EPA also requests comment on provisions for transfer of consumption rights from Norway or Poland should the situation arise.

The Parties have placed a cap on production, in addition to the current cap on consumption of class II substances. This would allow for the possibility of transfers of production allowances. Because of the minimal restrictions placed on the trade of HCFC production between certain Parties, EPA proposes to allow such production transfers, using a process very similar to the class I process for international trades (see 40 CFR 82.9(c)).

Such transfers are authorized under section 616 of the CAA. The proposed regulations in today's document that would implement this authority are arranged consistent with international trades under the class I allowance system. For trades from a Party, EPA proposes that the person must obtain from the principal diplomatic representative in that nation's embassy in the U.S. a signed document stating that the appropriate authority within that nation has revised production limits for that nation equal to the lesser of: The maximum production that the nation is allowed under the Protocol minus the amount transferred; the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred; or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances allowed. The person would need to submit to EPA information on the contact person and Party authorizing the transfer; the chemical being transferred; the control period for that transfer; and a signed statement that the increased production is intended as an export to the relevant Party.

For trades to a Party, the person must submit to EPA the same information outlined, except for the signed statement. For these trades, the allowance revisions would be reflected at the individual trader level, as discussed below. In reviewing submissions for trades to a Party, the Administrator would have the discretion to take factors into account relating to possible economic hardships created by a trade, potential effects on trade, potential environmental implications, and the total amount of unexpended allowances held by entities in the U.S.

For both trades from and to Parties, the Administrator, following review, would issue a notice either granting or deducting the appropriate production allowances and specifying the affected control period(s), provided she determines it meets the proposed required conditions.

In approving an international trade, the Administrator would also need to ensure that the individual person or entity involved in the trade has made the appropriate revisions to his/her allowance balance. For trades from a Party, the Administrator would issue a notice revising the allowances of that entity to equal the unexpended production allowances held by the entity plus the level of allowable production transferred from the Party.

For a trade to a Party, section 616 of the CAA does not limit the quantity of production allowances that may be transferred but the Administrator is given the option to disapprove the proposed transfer if she/he believes the transfer is not consistent with domestic policy or if the transferor did not possess sufficient allowances to permit the reduction in aggregate domestic production to be reflected in the transferor's revised production limits. If EPA approves the proposed transfer, the Administrator is required to establish revised production limits for the transferor so that the aggregate domestic production permitted after the transfer reflects the effect of the transfer of production allowances because such trades cannot result in an increase in

production over what would have occurred in the absence of the trade. In certain circumstances, following a transfer of allowances to another Party, Section 616 requires that the aggregate national U.S. production of HCFCs be reduced by an additional amount beyond a simple deduction of the number of allowances transferred to another Party. Specifically, if the average U.S. production during the previous three years for the controlled substance transferred is less than the total allowable U.S. production under § 82.18(h) and (i), then following a transfer, U.S. production would need to be revised downward to equal the three-year average minus the amount transferred. This additional reduction would also need to be reflected in the revised production limits for U.S. production allowance holders. EPA believes that in these circumstances, it is appropriate for the required reduction in U.S. production to be allocated among all the transferors in the same control period in proportion to the number of allowances transferred by each entity. EPA would notify each transferor of the revised production limit after approving the transfer of production allowances to a Party rather than waiting to the end of the control period; the transferor would then be able to make timely market decisions with the remaining production allowances. Although there are perhaps other methods of revising production limits, EPA is proposing the following method to determine the transferor's balance of production allowances after a trade to a Party. Under today's proposal, the Administrator would issue a notice revising the transferor's balance of production allowances to equal the lesser of: (a) The unexpended production allowances held by the transferor minus the quantity of production allowances transferred; or (b) the quantity derived from (a) minus the quantity derived from the following calculation: the total U.S. allowable production for the HCFC being traded minus the U.S. average annual production of the HCFC for the three years prior to the transfer.

For those more comfortable with formulas, the proposed method could be expressed in this manner:

$$f = (a - d) - (c - b), \text{ if } c > b$$
$$a - d, \text{ if } c \leq b$$

Where a = the person's unexpended production allowances, b = the U.S. 3-year average production for that HCFC, c = the total allowable U.S. production for that HCFC, and d = the actual quantity being transferred, and f = the person's revised production allowance level.

EPA requests comment on the proposed method used to calculate revised production limits for those wishing to trade production allowances internationally; EPA requests comment on possible alternative methods to calculate revised production limits.

If more than one transfer of production allowances occurs in the same control period, the Administrator will need to issue revised production limits for all the transferors after each transfer. Each transferor's balance of production allowances previous to the current transfer would be adjusted upwards retroactively after each transfer and each transferor would be notified after the approved transfer rather than towards the end of the control period. Under EPA's proposal, if more than one company trades production of an HCFC to another Party or Parties in one control period, they would all equitably share the burden of absorbing any shortfall in national production. Although there are perhaps other methods of revising production limits, EPA is proposing the following method to determine the revised production limits for all transferors in the same control period since EPA believes that the potential allowance decrease, (c-b), would be allocated among all transferors. EPA is proposing that the formula for revising allocations after a transfer would be:

$$a - [(c - b) \times (d/D)] - d,$$

where D = the total amount of allowances transferred by all domestic producers in that control period.

EPA requests comment on the proposed method used to calculate revised production limits for all transferors transferring production allowances in the same control period; EPA requests comment on possible alternative methods to calculate these revised production limits.

6. Transfers of Current-Year Allowances

In the ANPRM, EPA considered approaches for permitting transfers of current-year allowances for class II controlled substances. A transfer of current-year allowances means the allowances being traded can only be expended for production or import in that specific control period, or calendar year. Transfers of current-year allowances do not change the quantity of baseline allowances assigned to a company. A trade of current-year allowances is a temporary trade, only reflected in a company's balance of allowances for that control period (calendar year) in which the trade occurs. Trades of current-year allowances were permitted in the class I regulatory program. From 1992 to 1995, many companies took advantage of the opportunity to trade current-year allowances for class I controlled substances.

Six of the eleven commenters on transfers were in favor of the free trade of current-year allowances. One commenter generally supported transfer of current-year allowances because it was consistent with the class I regulatory program. A commenter felt that it should be allowed while another commenter noted that the bureaucratic burden on companies and on EPA would not be too large and that such flexibility would be as complete as it could be within a system of controls. The remaining five commenters were silent on the issue. EPA agrees that trades of current-year allowances would allow companies the flexibility to respond to market forces and achieve economies of scale in production and import.

EPA proposes to allow trades of current year allowances similar to those permitted in the class I regulatory system and seeks comment on allowing current-year trades.

7. Permanent Transfers of Baseline Allowances

EPA also considered the merits of permitting permanent transfers of baseline allowances for class II substances in the ANPRM. A transfer of baseline allowances is a permanent shift of some quantity of a company's baseline allowances to another company. The permanent nature of the transfer of baseline allowances makes the trade different from the transfer of current-year allowances. For example, if Company A produced 1,000 kilograms of HCFC–22 in the baseline year, it would receive 1,000 baseline allowances of HCFC–22. Company A could in turn permanently trade away these baseline allowances to Company B. In all relevant subsequent years, Company A's quantity of baseline allowances would be permanently reduced, while Company B's quantity of baseline allowances would be permanently increased. At the 2010 phaseout of HCFC–22 and HCFC–142b, Company B would be responsible for deducting the HCFC–22 that it permanently received from Company A from its baseline allocation.

Under a chemical-by-chemical allocation approach, the historic consumption baseline amount for a given chemical would be deducted from the current holder of the permanent allowances in the relevant phaseout year for that chemical (e.g. 2003 for HCFC–141b). If a person purchases permanent baseline allowances, of

HCFC–141b, for example, then conducts an inter-pollutant trade within the company, that person would deduct the ODP-weighted equivalent consumption of the HCFC–141b that was traded to them on a permanent basis. In our example, in 2003, the purchaser of allowances associated with HCFC–141b would have that number of ODP-weighted allowances associated with HCFC–141b deducted, even if it had conducted an inter-pollutant trade within the company for another HCFC.

Six of the eleven commenters discussing transfers favored allowing permanent transfers of baseline allowances. Five of the eleven commenters did not discuss permanent transfers.

EPA proposes to allow permanent trades of allowances for class II substances. EPA requests comment on its proposal to allow these permanent trades.

8. Offset for a Transfer of Allowances

The final aspect of trades of class II allowances discussed in the ANPRM and considered in today's document is the manner of achieving greater total reductions than would occur in the absence of a trade, as required by section 607(a) of the Act. EPA believes that the offset required by section 607 of the Act is intended for inter-pollutant and inter-company transfers. Therefore, in the allowance program for class I substances, an offset was not included for international trades. International trades are governed by section 616 of the Act, rather than section 607.

Section 607(a) states that, ''transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions.'' For the class I allowance program, EPA adopted a one percent offset, deducted from the transferor's allowance balance, for all inter-pollutant trades and all inter-company trades (40 CFR 82.12(a)(1)(i)(H), 82.12(b)(4)(i)(F)). However, for inter-pollutant trades combined with inter-company trades, only one offset was applied to the transfer of allowances.

Nine commenters on possible offset options preferred a lower offset than the one for the class I system, because CFCs are more ozone-depleting than HCFCs. There were two suggestions for an offset of 0.1 percent and there were two for an offset of 0.05 percent. Because the class II substances are less ozone-depleting than class I substances, EPA considered a smaller offset for trades of HCFC allowances. Yet, EPA recognizes that the offset must provide an environmental benefit, as called for by Congress. For class II controlled substances, EPA is therefore proposing a 0.1 percent offset for inter-company transfers. This 0.1 percent offset would simplify calculations for the affected companies and reflect the lower ODP of HCFCs compared to CFCs. This offset would still provide the environmental benefit intended by Congress without hampering market forces. If allocations are made and implemented on a chemical-by-chemical basis, both inter-pollutant trades and inter-company domestic trades would be affected.

EPA requests comment on its proposal to impose a 0.1 percent offset to afford an environmental benefit associated with domestic trades, in compliance with section 607 of the CAA.

J. Would Other Regulatory Options Be Used To Control HCFCs?

In the ANPRM, EPA also discussed other authorities under Title VI that are available to ensure that the U.S. adheres to its phaseout schedule for class II substances. The discussion outlined relevant provisions of EPA's current labeling program for products made with ODSs, its SNAP program and the nonessential products ban. These provisions would affect the *sale and/or use* of HCFCs rather than their production, import and export, which an allowance system would control directly. The purpose of including these regulatory tools in the ANPRM discussion of controlling HCFC emissions was to make readers aware of the variety of paths EPA could take in sustaining compliance with the Protocol.

Because EPA is proposing an allowance allocation system in today's action that it believes would be effective in maintaining compliance with the Protocol, it is not proposing today to include any amendments to these provisions to further control HCFCs. The approaches discussed briefly below however, could provide further options for HCFC control, if needed to ensure U.S. compliance.

Thirteen commenters were generally opposed to the imposition of any of the following regulatory tools.

1. Labeling

Under section 611 of the Act, EPA could require labels on products containing or made with specified class II substances. These labels would read as follows:

Warning: Contains/manufactured with [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

As a prerequisite to imposing such a labeling requirement, the Administrator would have to determine, ''after notice and opportunity for public comment, that there are substitute products or manufacturing processes (A) that do not rely on the use of such class II substance, (B) that reduce the overall risk to human health and the environment, and (C) that are currently or potentially available. ''Beginning January 1, 2015, all products containing or manufactured with a class II substance must bear the specified label regardless of whether the Administrator has made a determination regarding the availability of substitutes (Section 611(c)(2) and 611(e)(5)). Therefore, the issue upon which EPA is requesting comment is whether EPA should, prior to January 1, 2015, require labels on certain products containing or manufactured with class II substances.

Eleven commenters felt that imposing labeling requirements before 2015 would be undesirable and unnecessary. A couple of commenters stated that such labeling requirements might precipitate what they characterized as confusing labeling that occurred with CFCs, requiring the intervention of the Federal Trade Commission. This statement represents the commenters' characterization only, and not that of EPA. The commenter has apparently confused the Title VI labeling regulations with a different labeling rule issued by another federal agency. EPA was consulted on several cases where potentially deceptive ''positive labeling'' appeared on a product. Typically, such a label would read, ''ozone-friendly'' or ''environmentally safe,'' while the product contained an ozone-depleting substance that may have had a lower ODP than found in other products in its category. These specific labels were not associated with the Section 611 labeling requirements of the CAA, and were subsequently referred to the Federal Trade Commission, because consumers were being sold products under potentially inaccurate labeling.

EPA does not currently see a need to use labeling to ensure compliance with the Protocol and is therefore not proposing in today's action to use this regulatory tool to control HCFC emissions.

2. SNAP Approval and Restrictions

Section 612 of the Act requires EPA to promulgate rules making it unlawful to replace any class I or class II substance with any substitute substance that may present adverse effects to

human health or the environment, where EPA has identified an alternative to such replacement that ''(1) reduces the overall risk to human health and the environment; and (2) is currently or potentially available.'' In accordance with Section 612 of the Act, and under the SNAP program, EPA publishes lists of acceptable and unacceptable substitutes for class I and class II substances. In some SNAP sector end-uses, class II substances have been listed as acceptable substitutes. Class II substances are viewed by the Agency as transition chemicals that facilitate the transition out of more harmful class I chemicals. Since 1994, availability of zero-ODP alternatives has increased in a number of end-uses. It is therefore possible that SNAP determinations regarding existing HCFC acceptable uses could be revised. This could happen through three mechanisms.

First, EPA could receive a petition from a company to add a substance to or delete a substance from the SNAP list of acceptable and unacceptable alternatives (See section 612(d)). Second, EPA could receive notification from a company before introduction of a substitute into interstate commerce for significant new use as an alternative to an ODS (See section 612(e)). Finally, EPA can initiate changes to the SNAP determinations independent of any petitions or notifications received. Such changes could be based on new data either on additional substitutes or on characteristics of substitutes previously reviewed.

Thirteen commenters opposed the use of SNAP to control the use of HCFCs to sustain compliance with the Protocol. Four commenters supported delisting only if the alternative significantly reduced risk to human health and the environment. Seven commenters were concerned about the possibility of creating an unfair competitive advantage for the new alternative and impacting small businesses adversely.

Under this rulemaking, EPA believes that the tracking of consumption of HCFCs will allow the U.S. to remain under the cap. Therefore, in this rule, we are not including any SNAP-related provisions. It is possible, that on their own, SNAP approvals and restrictions might affect HCFC production and consumption sometime in the future.

3. Non-Essential Products Ban

Section 610(d) of the Act prohibits the sale, distribution, or offer for sale or distribution in interstate commerce, of certain nonessential products that contain or are made with class II substances. EPA is authorized to grant exceptions to the ban under certain conditions. Since the issuance of the final rule providing exemptions from the statutory class II nonessential products ban (58 FR 69638, December 30, 1993), EPA has received information, including information on new substitutes for making certain products, indicating that it may be necessary to reconsider the continued appropriateness of those exemptions. The Agency also is aware that since the issuance of that initial final rulemaking, there has been further substitution away from ozone-depleting substances in aerosols and pressurized dispensers. EPA is currently reviewing information concerning the aerosol products and pressurized dispensers that were given exemptions in the December 30, 1993 rulemaking, independent of the goals of this rulemaking. In particular, the Agency is evaluating whether there are technologically available substitutes for the HCFCs used in these products.

Two of the four commenters were opposed to the use of the ban to control use of HCFCs and thus sustain compliance with the Protocol. One commenter supported use of the ban to ensure the U.S. does not exceed its consumption and production caps for class II substances.

EPA does not currently see a need to use the nonessential products ban to ensure compliance with the Protocol and is therefore not proposing to use this regulatory tool to control HCFC use. It is possible, that on its own, the nonessential products ban might affect HCFC production and consumption sometime in the future.

III. Additional Proposed Provisions

EPA is proposing several provisions that were not discussed in the ANPRM. Some are definitions, necessary to implement portions of the class II allowance system discussed in the ANPRM. Others are additional issues that have arisen since publication of the ANPRM. EPA seeks comment on each of the proposed provisions below.

A. Would There Be Changes in Definitions?

To effectively establish an allowance allocation system for HCFCs, EPA is proposing to change and add several definitions to § 82.3 of the existing phaseout regulation. We are proposing modifications that will clarify throughout this proposal where a provision would apply only to a class I substance or to both class I and class II substances.

1. Modifications

EPA is proposing to modify the definitions for ''baseline consumption allowances'' and ''baseline production allowances'' to include class II ODSs, in addition to currently covered class I ODSs. EPA is also proposing to modify the definitions of ''consumption allowances,'' ''production allowances,'' and ''Article 5 allowances'' to include class II ODSs.

The definitions for ''destruction credit'' and ''transformation credit'' would not apply to the class II allowance system. To date, no one under the class I system has requested destruction or transformation credits after production allowances have been expended for a chemical that was later found to be destroyed or transformed in the manufacture of another chemical or product. EPA believes that, with less HCFCs being used in manufacturing systems that ultimately transform or destroy them than the earlier class I ODSs, the likelihood that any company would need or want to use these credits is minuscule. Normally, destruction or transformation is anticipated prior to production. Companies need not expend production allowances when producing ODSs specifically for destruction or transformation. EPA requests comment on its decision to follow suit with the accelerated phaseout program for class I substances (60 FR 24970, May 10, 1995) and not include the definitions for ''destruction credit'' and ''transformation credit.''

At this time, the definitions for ''essential use allowances'' and ''unexpended essential use allowances'' would not apply to the class II allowance system and EPA is proposing to modify them to make them explicitly apply to class I substances only. If the Parties approve any essential use exemptions for class II substances, EPA would consider such exemptions in light of the domestic phaseout and revisit these definitions as necessary.

2. Additions

EPA is proposing to add a definition of ''export production allowances.'' Companies could use these allowances, calculated at 100 percent of their phased-out HCFC's production baseline, to produce certain HCFCs after the relevant phaseout date, for export only to any Party that has ratified the Copenhagen Amendments (such Parties would be listed in Appendix C). These export production allowances would become available to HCFC–141b producers on January 1, 2003 (the phaseout date for that chemical), and remain available at least until December 31, 2009. EPA expects to re-evaluate the possibility of export production allowances in 2009 in view of the 65 percent reduction in consumption in

2010. An export production allowance could be used for production for purposes of export only, where net consumption equals zero. A definition of ''unexpended export production allowances'' is also being proposed. It is not clear at this time the amount of export production allowances that would be available for HCFC–141b, as well as HCFC–22 and HCFC–142b, after January 1, 2010, when a 65 percent reduction in consumption of HCFCs is mandated by the Protocol. Following notice and comment, EPA plans to issue a rule prior to 2010, which would allocate relevant allowances, beginning in 2010, taking into account the declining consumption cap, the refrigerant servicing exemptions after 2010, and any relevant modifications to the Protocol or the CAA.

In proposing a class II petition system for used ODSs imports, EPA is proposing adding three definitions that will allow EPA to closely track used imports and make accurate determinations on the eligibility to import the used HCFCs. Three new definitions are proposed to help facilitate a rigorous petition system: ''individual shipment,'' to distinguish one separate shipment from another; ''non-objection notice,'' to indicate when a person is granted privileges to import an individual shipment of used HCFCs; and ''source facility,'' to explain exactly what information the petitioner must provide regarding the equipment and place from which the used HCFC was recovered.

Definitions of ''space vehicle/defense allowances'' and of ''unexpended space vehicle/defense allowances'' are added to permit U.S. Federal government entities and certain other entities to import or order the production of HCFC–141b for critical uses related to space vehicle or narrow defense needs, where no substitute for HCFC–141b is viable. These allowances would not be tradeable.

B. What Type of Allowances Would Be Available for Space Vehicles and Defense Needs?

EPA is proposing to provide space vehicle/defense allowances to a U.S. agency, department or instrumentality, or related entities involved in space vehicle endeavors, for extremely narrow needs after demonstrating by petition to EPA that no viable alternative exists for HCFC–141b and that space vehicle or national security viability is at issue if HCFC–141b cannot be used for the specified purpose. NASA first brought this need to EPA's attention because space launch vehicles currently use HCFC–141b-blown foam as the only workable thermal protection system for several different areas of the space vehicle system. EPA is also proposing to provide allowances to U.S. military departments for extremely narrow needs after demonstrating by petition to EPA that no viable alternative exists for HCFC–141b in narrow defense uses such as cleaning of oxygen equipment and aircraft parts.

EPA believes U.S. government space vehicle entities, other space vehicle service entities and military departments have vital needs for small quantities of HCFC–141b for very specific needs beyond the phaseout date contained in § 82.15(a)(4) of today's rulemaking. These uses would include unique thermal protection system needs of space vehicles designed to travel beyond the limit of the earth's atmosphere (e.g., satellites, space stations, space transportation systems such as the Space Shuttle system), and the cleaning of oxygen equipment and aircraft parts. EPA believes that the new §§ 82.15(a)(1) and 82.18(e) will not adversely affect compliance with the provisions of the CAA Amendments of 1990 or the U.S. obligations under the Protocol as amended.

EPA considered other approaches to an exemption for the production and import of HCFCs critically needed for space vehicles intended to travel outside the earth's atmosphere or for narrow defense needs. EPA considered whether the exemption should be specific for one, or two, or all of the HCFCs (e.g., specific exemptions only for HCFC–141b, HCFC–22, or HCFC–142b for national security purposes.) To date, EPA has received only specific requests for space vehicle and defense exemptions for HCFC–141b. Therefore, EPA believes there is no need for a broader exemption and accordingly is proposing to limit the exemption to HCFC–141b. EPA requests comment on its proposal to limit a space vehicle/defense exemption to HCFC–141b.

A person seeking an exemption for the production and import of HCFC–141b for space vehicle purposes and for narrow defense needs under § 82.15(a)(1)would need to apply for the exemption under § 82.18. Today's action proposes a streamlined application and review process under § 82.18(e) for space vehicle/defense allowances. The application process would require a U.S. government or other entity involved in space vehicle endeavors or narrow defense uses to submit the following information to EPA prior to July 1, 2002: (a) Name and address of the entity; name of contact person and phone and fax numbers and e-mail address; (b) quantity (in kilograms) of HCFC–141b needed for each relevant control period for the space vehicle or defense interest; (c) a detailed description of the space vehicle or defense need met by the use of HCFC–141b; (d) a technical description of the processes in which HCFC–141b is being used; (e) a technical description of the area where the product will be applied; (f) a technical description of why alternatives and substitutes are not sufficient to eliminate the space vehicle or defense use of HCFC–141b; (g) a detailed analysis showing why stockpiled, recovered or recycled quantities are deemed to be technically infeasible for use; (h) an estimate of the number of control periods over which such an exemption would be necessary; and (i) a detailed description of continuing investigations into and progress on possible alternatives and substitutes.

EPA would review the application in order to determine whether to grant space vehicle/defense allowances for the specific quantity of HCFC–141b for the specified control period. If more information is needed, EPA would contact the applicant and specify the necessary information. EPA would retain the right to disallow the space vehicle/defense allowances based on information received regarding, *inter alia,* fraud, misrepresentation, inconsistency with Articles and Decisions under the Montreal Protocol, inconsistency with the CAA Amendments of 1990, or other reasons related to human health and the environment.

EPA is proposing a specific application period ending July 1, 2002. By limiting the time frame for accepting applications, EPA is providing a strong incentive for U.S. government and other space vehicle entities to periodically review their HCFC–141b needs for long-term planning. By limiting the time frame for the review of applications, EPA would also be reducing the Agency's long-term burden to continually review claims of space vehicle or defense interest.

EPA considered conducting a one-time period of review of petitions for space vehicle/defense allowances to be finalized by publication of a notice with a list of acceptable and unacceptable space vehicle/defense exemptions to the class II phaseout dates. EPA is not proposing this approach because the Agency expects very few applications for space vehicle/defense allowances for HCFC–141b, and EPA believes it is important for petitioners to periodically reassess the critical nature of continued HCFC–141b need. EPA expects that no more than one percent of the total

HCFC–141b allocations would be needed for this exemption. EPA is also proposing that the allocation be updated every three years, via submission of an update report which indicates the following: whether the entity has found no viable substitute and will need to extend their exemption for the next three years; why the entity believes no alternatives are viable for their application; and the efforts undertaken by that entity to find alternatives. The first period would provide allocations for January 1, 2003 through December 31, 2005. Updates would be due to EPA by March 1, of 2005 for the three-year period of 2006 through 2008, and so on until 2010. EPA would make a determination on the update within 90 days of receipt and notify the submitting entity accordingly.

Another option in the implementation of an exemption for the production and import of HCFCs beyond the accelerated phaseout would be a limit on the total quantity of HCFC–141b that one U.S. government entity or other space vehicle entity could request and obtain in a control period. Finally, EPA could limit the number of control periods for which a U.S. government or other space vehicle entity with these interests may apply for an HCFC–141b exemption. EPA is not proposing these options to limit the quantity of material or the control periods because the Agency expects the numbers of requests and the quantities to be very small. However, EPA is proposing to limit the total quantity of HCFC–141b produced or imported for space vehicle or narrow defense needs to one (1) percent of the aggregate of HCFC–141b baselines per year. This would reflect the expected small number of requests for small quantities while still allowing for export to Parties and Article 5 countries.

EPA is today proposing to create an exemption process for the continued production or import of HCFC–141b up to January 1, 2010, for applications related to critical space vehicle needs or narrow defense needs in cases where alternatives and stockpiled, recovered or recycled quantities are deemed to be technically infeasible for use. Upon request by the appropriate Agency or entity, the Administrator may grant authorization for production or import of a specified quantity, for a three year period, beginning on January 1, 2003. If need for HCFC–141b remains critical past 2005, exempted entities may renew their submission for an additional three years by updating the information submitted in the original application to EPA. Approval for production or import does not imply or mandate production; each user must locate a willing supplier and negotiate supply. It should be noted that the Parties at the 1999 Meeting of the Parties in Beijing adopted a production freeze, which requires that all production, which would include space vehicle/defense exemptions, remain below the cap. The 65 percent reduction in consumption in 2010 may preclude continued availability of this exemption; the more current consumption figures in the years leading up to 2010 may provide EPA with a more realistic picture of the possibility of granting the exemption for the years after 2010. The availability of this exemption will be revisited in the rulemaking implementing the January 1, 2010 phaseout. Consequently, today's action proposes that the exemption be available until January 1, 2010. EPA requests comment on its proposal to make the space vehicle/defense exemption available until January 1, 2010.

The Agency believes technically feasible alternatives will likely be available for commercial and the vast majority of non-commercial uses of HCFCs prior to their phaseout dates. However, there may be specialized uses where stockpiled, recovered, or recycled quantities are technically inadequate. At this time, the only foreseeable use of this authorization is for the thermal protection system used for space exploration and satellite launches and for cleaning applications in certain defense equipment.

Section 605 of the CAA contains certain constraints on use, production, and consumption of HCFCs. This exemption is limited by these constraints. For example, under CAA Section 605(a), effective January 1, 2015, no person may introduce into interstate commerce or use any virgin class II substance unless the substance is either used and entirely consumed (except for trace quantities) in the production of other chemicals, or the substance is used as a refrigerant in appliances manufactured prior to January 1, 2020. In addition, CAA section 605(b)(2) prohibits production of class II substances on or after January 1, 2030. Finally, EPA will not authorize quantities of HCFCs under the space vehicle/defense exemption that would cause the U.S. to exceed the HCFC consumption cap as agreed under the Montreal Protocol.

To facilitate accurate tracking of exempted HCFC–141b production and use, EPA proposes requiring the manufacturer of the applicable foam (or the formulation for spray foam) or the cleaning product to submit information quarterly to EPA delineating the quantity of HCFC–141b received; the quantity of HCFC–141b used or contained in the product; the identity of the producer or importer supplying the HCFC–141b; the identity of the recipient of the product made with or containing HCFC–141b; and the quantity of HCFC–141b used or contained in the product sent to the recipient. Additionally, the entity requesting allowances of the exempted material in space vehicles or defense purposes would report quarterly to EPA on: the type of product made with or containing HCFC–141b; the specific application of the product; the quantity of HCFC–141b used or contained in the product; and the identity of the manufacturer of the product.

C. Would There Be a Petition System for Importing Used HCFCs?

With today's action, EPA is proposing a petition system for use in importing used HCFCs. The Protocol allows used ODSs to be imported outside of the process required under the cap. Because the potential for abusing this exception was high in imports of class I substances (for example, by claiming that a CFC was used when in fact it was virgin, thus requiring allowances), EPA instituted a petition process in 1995 that requires those wanting to import used class I ODSs into the U.S. to petition EPA for approval before making the import. To ensure that relevant class II imports are legitimately used previous to import, EPA proposes a petition system for the import of used HCFCs. EPA will make a definitive determination that a shipment contains used HCFCs before granting a non-objection notice allowing the import. A description of the petition system that EPA is proposing is discussed below.

The original reason the Parties to the Protocol agreed to permit international trade in previously used ozone-depleting substances was to ease the transition to alternatives. In addition, the Parties believed that allowing trade in quantities of already existing used material would offset the need for new global production.

Evidence has increasingly indicated that new production overseas of class I material has been clandestinely diverted to the U.S. and other non-Article 5 countries as imports of ''used'' material. EPA anticipates that a similar situation will evolve as HCFCs are phased out and supply diminishes in the face of continued demands.

EPA is proposing today's petition system in the hopes that the provisions of the process can guard against abuses and guarantee that imported material is truly previously used, thus setting the stage for an effective class II petition

system for used imports. EPA requests comment on all aspects of the proposed petition system for the import of used HCFCs.

1. Petition for Each Individual Shipment

EPA is proposing that a petition to import used HCFCs may only be submitted on a shipment-by-shipment basis. The information in a petition and the quantity a person wishes to import into the U.S. must be limited to a specific shipment and a single U.S. Customs entry. If an importer cannot arrange for the entire quantity to be shipped as one entry through U.S. Customs, the importer would be required to submit more than one petition for the quantity in each individual Customs entry.

2. Threshold Quantity Requiring a Petition

EPA is proposing a threshold quantity of used HCFCs for an individual shipment for which a person is required to submit a petition to import. EPA is proposing that individual shipments of five (5) pounds or more require submitting a petition to import. A threshold quantity of five pounds allows a company to take three samples from a large ISO-tank for laboratory analysis and send those samples to a testing facility in the U.S. without being subject to the petition requirements. In developing today's proposal, EPA also considered requiring that a person who wishes to import any quantity of used HCFCs, regardless of the size, be required to submit a petition, thereby eliminating the threshold level altogether. EPA is not proposing to eliminate the threshold level altogether in order to minimize burden on the regulated community and conserve Agency resources.

3. Information Requirements

EPA is proposing that petitions to import used HCFCs include a comprehensive and detailed list of information. This reflects the type of information that EPA needs to independently verify the previous use of the HCFC. Today's action proposes under § 82.24 (c)(3) that contact information for the entire chain of custody of the used HCFC be provided in the petition. For example, a petition must include complete contact information for: every source equipment from which the used controlled substance was originally recovered; every company that collected the material from the equipment; every previous owner of the material; and every company that will be exporting the used controlled substance. EPA seeks comment on the effectiveness and potential burden associated with requiring such contact information.

Today's proposal calls for providing a copy of a contract for the purchase of the used HCFC in addition to the intended use. In light of efforts by Parties to the Protocol to implement a licensing system for exports as well as imports, EPA is proposing that the petitioner provide an export license from the appropriate government agency in the country of export. EPA requests comment on its proposal for detailed information to accompany each petition to import used HCFCs.

EPA also considered proposing that the petition to import used HCFCs include the name, make and model number of the equipment from which the HCFC was as a means to verify that the shipment of HCFC had been truly used to operate equipment. EPA requests comment on the likely utility and burden of requiring this information about the equipment from which the material was removed.

4. Timing for Review of a Petition

EPA considered many time frames for the review of petitions to import used HCFCs, including a complete elimination of any time limit for EPA's review of a petition. EPA also considered whether to include an automatic approval provision with any of these time limits. Through experience and the unexpected volume of petitions in the class I petition system to import used CFCs, EPA learned that the 15 working-day time limit for petitions was too short for a thorough review. Given the large number of petitions used being submitted (192 in 1997, 160 in 1998, and 120 in 1999), combined with the fact that EPA will likely require more time to independently verify the information required with today's document, EPA is proposing a time limit for the review of a petition by EPA of forty (40) working days. EPA believes that 40 working days allows it the time to thoroughly verify the information in the petition and decide whether to allow or disallow the petition. EPA requests comment on whether the 40 working-day time limit is practicable and appropriate or whether another time limit would be more appropriate.

EPA is specifying that the time for review begins on the working day after EPA's Global Programs Division actually receives the petition. EPA is proposing that a 40-day time frame with no automatic approval would allow the Agency to balance the goals of responsiveness to legitimate requests and thoroughness in identifying abuses of the petition process. EPA additionally proposes, that while EPA will make every effort to respond to the petitioner within the 40 working-day period, a lack of response does not constitute a grant of authority to import. EPA requests comment on the need for a definitive response from EPA before a person may import the used HCFCs.

5. Reasons for Issuing an Objection Notice

Under the class I petition process, EPA attempts to independently verify the information contained in a petition to import used HCFCs, with special attention given to confirming the prior use of the material. EPA's effort to confirm the information in a petition is conducted with support from other government agencies that are members of the inter-agency task force combating illegal imports of ozone-depleting substances. Since 1994, EPA has worked with the inter-agency task force members who include the Department of Justice, the Internal Revenue Service, the Customs Service, the State Department, and the Department of Defense. In the six years of implementing the petition process to import used class I controlled substances, EPA has received a variety of petitions. Many of the petitions provided insufficient information or provided information that EPA had reason to doubt was sufficient to confirm that the material was, in fact, previously used.

To adequately process class II petitions, EPA is proposing a list of reasons for which the Agency might issue an objection notice to a petition to import used HCFCs.

The first reason for disallowing a petition is a lack of sufficient information. If the importer of used HCFCs fails to supply the required information in § 82.24(c)(3), this would be a basis for disallowing a petition.

The second reason for disallowing a petition is if the Agency determines that the petition contains, or is believed to contain, false or misleading information.

EPA may issue objection notices for petitions to import used HCFCs if the transaction appears to be contrary to provisions of the *Vienna Convention on Substances that Deplete the Ozone Layer,* the Montreal Protocol and Decisions by the Parties, or the non-compliance procedures outlined and instituted by the Implementation Committee of the Montreal Protocol. Section 614(b) of the CAA states that in the case of conflict between the CAA and the Montreal Protocol, the more stringent provision shall govern. Thus, EPA proposes that if a petition contains information about a transaction that

indicates the transaction is contrary to the provisions of the Convention or the Protocol, including Decisions by the Parties to the Protocol or the Protocol's non-compliance procedures, that shall be grounds for issuing an objection notice.

If a country states that it is no longer allowing exports or if it reports that it has not granted any export licenses, EPA will treat this as grounds for issuing an objection notice for a petition to import from that country. EPA proposes to disallow a petition if the appropriate government agency in the exporting country has not agreed to issue any required export license for the individual shipment of used HCFCs that is cited in the petition.

Today's action also proposes that EPA may issue an objection notice for a petition when the Agency receives information indicating that a person listed in the petition has produced false or misleading information regarding transactions in ozone-depleting substances. In the past, EPA has received information from other U.S. government agencies, from other petitioners, from non-governmental organizations and from foreign governments that have implicated companies or individuals in activities designed to mislead government authorities about activities related to ozone-depleting substances.

Another proposed reason for disallowing a petition is the receipt by the Administrator of information regarding activities contrary to EPA regulations by any individual or company listed in a petition. Activities contrary to EPA regulations that have been reported to EPA or discovered by EPA personnel and that are related to ozone-depleting substances include, but are not limited to, un-certified recovery; un-certified reclamation; reclamation that does not meet the required specifications; improper labeling; diverted transhipment; mis-identification during import; forgery of EPA documents; and fraudulent claims regarding these activities. This action proposes that EPA may disallow a petition if the Agency receives information that any person or company listed in the petition is involved in an activity that is a potential violation any 40 CFR part 82 regulation or any evidence of false statements.

EPA also believes that conditions established for disbursing monies to specific country projects by the Executive Committee of the Montreal Protocol's Multilateral Fund may provide a basis for objecting to petitions. EPA believes as a general rule that no used HCFCs should be imported from Article 5 countries where reclamation capacity, for that specific controlled substance, has been or is being installed through assistance of the Multilateral Fund. The U.S. contributes approximately one fourth of all funds going to the Multilateral Fund, the general purpose of which is to assist countries operating under Article 5(1) of the Protocol to make the transition away from ozone-depleting substances; and a transition policy includes the development of reclamation facilities in order to optimize the use of existing ozone-depleting substances so as to avoid unnecessary production of virgin materials. Thus, EPA views the importation of used HCFCs from countries where reclamation capacity has been supported by the Multilateral Fund to run counter to U.S. interest, and counter to the aims of a global phaseout strategy. EPA requests comment on its proposal that importation of used HCFCs from Article 5 countries where reclamation facilities have been funded by the Multilateral Fund for reclaiming ODSs to be used for that country's basic domestic needs may provide a basis for objection to a petition.

EPA is proposing an appeals process through re-petitioning within 10 working days after the date of an objection notice from the Administrator, if the basis for the objection notice is ''insufficient information.'' EPA proposes to allow only one re-petition for any original petition received by EPA. EPA requests comment on the appropriateness of the aspects proposed above for an appeals process.

6. Petition and Non-Objection Letter to Accompany the Shipment

EPA is proposing a requirement in § 82.24(c)(3) that the petition and the non-objection notice from EPA, approving the import of a used class II controlled substance, accompany each shipment through U.S. Customs. EPA believes that presenting the petition and EPA-approval letter with a shipment will facilitate the clearance through U.S. Customs.

D. Would There Be New Restrictions on Imports to and Exports From Specific Parties?

EPA is proposing a restriction on Parties to whom you (as defined in Section II.C) can export HCFCs and from whom you can import HCFCs, beginning in 2004, to comply with an amendment to the Protocol that the Parties agreed to at the eleventh meeting in late 1999. This amendment states that as of January 1, 2004, each Party shall ban imports from and exports to countries that have not ratified the 1992 Copenhagen Amendments, in addition to the original Montreal Protocol (1987) and London Amendments (1990). These bans on imports from and exports to non-Parties reflect an agreed strategy by Parties for encouraging ratification of the Protocol and each successive package of amendments.

Appendix C of this rulemaking will include all Parties to the Copenhagen Amendments as of the promulgation date of the final rule. The UNEP web site maintains a real-time list of current Parties to the Protocol and all its amendments, for those wishing to ensure they are viewing the most current list. The Internet address is: http://www.unep.org/ozone/ratif.htm.

E. Should There Be Consumption Allowance Credits for Reductions of HCFC Production By-products Regulated by Title VI?

In addressing emissions reductions with a view toward also avoiding increases in, and encouraging reductions of, other regulated emissions, EPA realizes that there is at least one case where the production of an HCFC creates a by-product that is also regulated under Title VI of the CAA. In an effort to encourage emissions reductions of other chemicals regulated under the CAA, EPA has in the past explored the ideas of reduction credits or offsets. Such an approach may be appropriately used in ensuring that a by-product (regulated under Title VI), created in the production process of an HCFC regulated under Title VI, is voluntarily controlled to the greatest extent possible. One option to consider is granting one available consumption allowance (one kilogram) and one available production allowance of the HCFC whose production creates the Title VI regulated by-product, for each kilogram of the by-product that is reduced as of a certain date from an established baseline. EPA believes that portions of the consumption allowances remaining below the U.S. cap, after allocations are made to eligible new entrants, could be available for such a program. Allowances could be granted only to the extent available under the cap.

EPA seeks comments on an incentive approach of providing allowance credits to producers of an HCFC who reduce emissions of that HCFC production's by-product that is also regulated under Title VI. EPA specifically requests comments on the advantages and disadvantages of this type of program and how such a program might work, if instituted.

EPA requests comments on any or all of the above additional provisions not discussed in the ANPRM.

IV. Summary of Today's Proposal

A. How Would Allowances Be Calculated and Allocated?

Both production and consumption allowances would be allocated to those with production and/or import activity in their individual baseline year (highest ODP-consumption year among 1989, 1994, 1995, 1996, and 1997). The recent decision by the Parties to freeze production of HCFCs requires two kinds of allowances: production and consumption. As in the class I system, a person would expend production allowances and consumption allowances to produce prior to the relevant HCFC phaseout. A person would need only to expend consumption allowances to import, and would receive consumption allowances in return following proof of export.

New entrants to the HCFC importing market, who began importing HCFCs after the end of 1997 and before April 5, 1999, when the ANPRM was published, may request allowances from EPA for historical HCFC importation during that time. These new entrants would be eligible for allowances if they submitted appropriate required quarterly reports to EPA prior to publication of this proposal; sent proper documentation of HCFC imports to EPA; and if the HCFC import market is their primary source of business income. EPA will issue available allowances to those companies determined eligible by EPA after review of the documentation.

EPA proposes to allocate and track allowances on a chemical-by-chemical basis, as done in the class I allowance system. Although EPA would analyze total baseline ODP-weighted consumption units to determine individual baseline years, the actual detailed allocations would be listed chemical-by-chemical. Consumption allowances would be allocated in the total amount of consumption in the baseline year. Production allowances would be allocated using total production for that same year. Tracking would work in the same way as under the class I system—any trades between chemicals would be ODP-weighted. Although many commenters prefer an ODP-weighted unit for allocation, trading and expenditure, EPA has studied its reporting obligations to the Protocol and its ability to ensure adequate compliance. To ensure company and U.S. compliance, EPA would need to know specific chemicals produced and consumed in order to maintain a chemical-by-chemical tracking system. EPA's required offset of 0.1 percent for inter-pollutant and inter-company trades would be significantly lower than the 1 percent used for class I substances. Therefore, the offset should not create an undue burden on trades.

EPA would annually allocate, based on the relevant baseline(s), for the entire period of time prior to each chemical's phaseout, unless the U.S. is unable to meet its 35 percent reduction by 2004. In that case, EPA would need to adjust allowances accordingly, on a pro rata basis. Before 2010, EPA would re-evaluate the percentage allocated from the baseline to determine whether modifications are necessary to meet the 65 percent consumption reduction required in 2010 by the Protocol. If reductions of HCFC–22 and HCFC–142b are not sufficient to reach the Protocol-required 65 percent reduction for 2010, EPA would allocate a lesser percentage of baseline. Any post-phaseout exceptions would be re-evaluated similarly.

At the beginning of each control period, EPA would officially notify each allowance holder of the amount available for that year, based on the relevant baseline. Between now and 2003, each allowance holder would receive 100 percent of their baseline consumption, and 100 percent of their historic production in the same baseline year as consumption, unless permanent trades occur that would transfer the traded portion of the allowance to the purchasing entity, or unless the U.S. would be unable to meet its 2004 35 percent reduction, as explained above. In 2003, HCFC–141b consumption allowances would be subtracted from the holders' allocations (other than any potential exceptions).

Because the Protocol freezes production at baseline but does not currently require further reductions, EPA is proposing to allow production after relevant phaseouts only for very narrow space vehicle or defense uses of HCFC–141b, and for export to any Party listed in Appendix C to Subpart A (Parties that have ratified the Copenhagen Amendments) after January 1, 2003. At that same time, an additional 15 percent of production baseline allocation of the phased out HCFC, over and above the Protocol production cap, would be allocated for production for export only to Article 5 countries for their basic domestic needs. This post-phaseout production (100 percent of production baseline to Parties that have ratified the Copenhagen Amendments plus 15 percent of baseline for Article 5 countries) would not require accompanying consumption allowances, only ''export production allowances'' or ''Article 5 allowances,'' respectively. When EPA re-evaluates baseline allocations before the HCFC–22 and HCFC–142b phaseout to determine 2010 compliance with Protocol reductions, it would also evaluate the continued possibility of offering export production allowances and Article 5 allowances for HCFC–22 and HCFC–142b.

EPA is proposing to allocate 100 percent of the consumption baseline, which is below the U.S. consumption cap of 15,240 ODP-weighted metric tons. The total baseline figure for consumption represents the aggregate of companies' baselines, as described below. The baseline EPA is proposing in today's action would be as follows: each company with baseline production and/or consumption in 1989, 1994, 1995, 1996, and/or 1997 would take their highest ODP-weighted consumption year as their baseline. Both production and consumption allowances would be derived from the relevant individual baselines in the applicable year. The allowances remaining between the aggregate baseline and the consumption cap could be used for allocations for those eligible entrants new to the HCFC market between January 1, 1998 and April 5, 1999.

EPA is proposing to use 100 percent of the baseline years' production, which would keep the U.S. in line with its production cap.

We propose to include 1989 as a potential baseline year because we have very good numbers from our earlier requests for baseline data, and class II substances began to increase their presence in the market during that time. In 1990–1993, our data on consumption was poor, because reporting was not yet required on a regular basis. To obtain accurate numbers from those years, we would need to request the data from each participating company, along with invoices, bills of lading, and other documents that could help verify the accuracy of the production and consumption numbers submitted. The time entailed and the uncertainty of receiving complete and accurate information rules out attempting to obtain figures from 1990 to 1993. Detailed reporting, for which we have supporting documentation and/or which we have verified with individual companies, began in 1994. Additionally, activity in class II ODSs grew significantly from 1994 to 1997. Therefore, including those years beginning with 1994 is reasonable. The years 1998 and later would not be included, except for certain eligible new entrants as discussed above, because

they would likely be artificially high, reflecting companies' anticipation of EPA's allocation system and the desire to stockpile.

B. Would There Be Additional Import or Export Restrictions?

We are proposing a restriction on importing and exporting HCFCs to comply with the Beijing Amendments to the Montreal Protocol. The proposed restriction would ban imports from and exports to countries that have not ratified the Copenhagen Amendments, in addition to the original Protocol and the London Amendments. These bans are further discussed in Section III.D. of today's proposal.

We are also proposing a petition system—similar to the one provided for used class I ODSs, with strengthening modifications—for the import of used HCFCs. A person wishing to import a used HCFC into the U.S. would need to petition EPA by providing detailed information on the import, including: specific name and amounts of the HCFC; source from which it was recovered; contact information for that source; intended shipper; intended port; date of import; intended reclamation and use in the U.S., and more. EPA would thoroughly verify information in the petition, and either issue a ''non-objection notice'' allowing the person to import the shipment, or an ''objection notice'' disallowing the import. See Section III.C. of this action for further discussion.

C. How Would Transfers Function?

The proposal would allow intra-company, inter-pollutant transfers, using ODP-weighting to account for differing ODPs between chemicals. The proposal would also allow inter-company trading (both same pollutant and inter-pollutant trading) with ODP-weighting required if two or more different chemicals are involved. International transfer of production allowances only would be permitted. An environmental offset, required by the CAA, is proposed at 0.1 percent for inter-pollutant and inter-company trades. At one-tenth of one percent, EPA believes the burden on inter-pollutant and inter-company trades would be minimal.

Transfers could be made on a temporary basis, to be applied within the control period (1/1 through 12/31) in which the trade is made. EPA also proposes to allow permanent baseline trades, which would transfer the allowances for the remaining period prior to phaseout. The recipient of the allowances would add those to its baseline, while the transferor would subtract them from his/her baseline. For example, if a company was allocated 150 allowances of HCFC–141b as part of its baseline, and that company then received 100 HCFC–141b permanent baseline allowances from a transferring company, the receiving company could expend 250 HCFC–141b allowances each year until 2003, at which time that company would subtract the entire 250 HCFC–141b (or commensurate ODP-weighted equivalent) allowances from its baseline allowances. The company that transferred the 100 allowances to the receiving company would not subtract those 100 HCFC–141b allowances from its baseline in 2003, because it already subtracted those allowances when it transferred them on a permanent basis to the receiving company.

EPA is not proposing to supplement an allocation system with further regulation under sections 610, 611, or 612 of the CAA at this time. EPA believes that compliance with the consumption and production caps can be assured through the proposed allocation system of class II allowances.

D. How Would the Reporting and Recordkeeping Requirements Change?

Recordkeeping and reporting would be similar to that used for class I. EPA would require quarterly reports, outlining each chemical and the amounts produced, imported, transformed, destroyed, and exported. These forms would be intended for use between the effective date of the final rule and the next reporting changes made to the phaseout regulations by EPA, or modifications made to address the incremental phaseouts past 2010, whichever is earlier.

EPA is proposing that failure by producers to keep records on their production or to submit reports regarding their production would lead the Administrator to assume that the producer has produced at full capacity during the period for which records were not kept, for purposes of determining possible violations. EPA requests comment on this proposal to account for missing records or reports in order to determine possible violations.

EPA is proposing that reporting for exports be conducted quarterly, as is reporting for all other activities. Under the class I system, reporting on exports was required annually. However, due to the recent adjustment to the Protocol banning trade with non-Parties to the Copenhagen Amendments, EPA needs data that is more current for review. Forms for recording exports made using export production allowances after a phaseout would require information on the chemical and the volume, with accompanying copies of the bills of lading and invoices. Trades of class II substances would be reported in the same manner as class I trades. ODP-weighting and calculation of the environmental offset would need to be accounted for in the transfer calculations, as they were for class I substances.

Entities granted space vehicle/defense allowances would report quarterly on the quantity of exempted HCFC–141b that was received and used, and how it was used. The foam formulator/supplier would also report quarterly on the producer from whom the exempted HCFC–141b was received, the amount received, the amount used in fulfilling space vehicle or defense needs, and the amount sold to whom in which products. The same entities granted the allowances would certify to EPA before the beginning of each year that a viable alternative to HCFC–141b, or stockpiled, recovered, or recycled HCFC–141b was not adequate or not commercially available.

EPA is currently exploring the possibility of having reports filled out and submitted to the Agency over a secure Web site. If and when electronic reporting would occur, EPA would change its guidance document and its Information Collection Request to indicate a change in burden hours.

EPA requests comment on any and all portions of today's proposal.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this 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 any regulatory action (including an advance notice of proposed rulemaking) that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

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

It has been determined by OMB and EPA that this action is a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore subject to OMB review under the Executive Order even though the annual effect on the economy is expected to be less than $100 million. This document was reviewed by OMB and changes recommended by OMB have been made and documented for the public record.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that employs 1000 employees or less; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

We have determined that 13 small businesses, or 50 percent of the total businesses addressed, would receive allowances, for which recordkeeping and reporting to EPA is required. The administrative recordkeeping and reporting these small businesses will experience will amount to an impact of between 0.01 and 0.02 percent of their HCFC revenues alone. When considering that the vast majority deal in numerous chemicals and/or also obtain revenues from services provided, this percentage for the majority would be significantly lower.

Although this proposed rule would not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Although small entities receiving allowance allocations would be subject to the same recordkeeping and reporting requirements as the larger entities, for purposes of tracking allowance trades and expenditures, the small entities would be on the same footing as the larger entities; they would be receiving their best year of activity in the range of years discussed above as a baseline year for determining allowance allocations, and would be able to conduct their business with a degree of certainty in a competitive market. Like the large entities, the small entities would receive allowances for the entire phaseout period, with the necessary adjustments each calendar year to accommodate the required reductions in consumption agreed to by the Parties to the Protocol and the phaseouts of HCFC–141b, HCFC–22, and HCFC–142b.

EPA believes that the ability to transfer allowances among HCFCs provides the greatest flexibility for small entities to manage their allocation. Unlike the class I system for transfers, there is no restriction to limit inter-pollutant transfers to groups of substances. Inter-pollutant transfers, also known as intra-company transfers or trades, would allow a company to shift allowances internally from one HCFC to another to respond to market forces, e.g. HCFC–142b allowances for HCFC–22 allowances. Inter-company transfers of allowances would also be possible, either on a current-year basis or on a permanent basis. Current-year trades are temporary trades and are reflected in a company's balance of allowances in the control period in which the trade occurs.

By using the phaseout schedules and the option for current-year or permanent trades, a small entity could opt for short-term decisions or long-term decisions concerning the allowances it holds after evaluating its place in the market. In addition, the offset required by the CAA is proposed at 0.1 percent, 0.9 percent less than that required under the class I allowance trading system; such an offset would still provide the environmental benefit required by Congress without penalizing small entities should they wish to avail themselves of transfers. EPA estimates that the burden would be negligible on small businesses, while those same small businesses would gain a marketable asset in their allocated allowances. The actual burden would consist of quarterly reports on production, imports, exports, and allowance trades, as well as paperwork describing any trades in which the business decides to engage. The estimated recordkeeping and quarterly reporting burden on the affected small businesses would be about 40 hours per year per business, at an estimated cost of $3,070. Each trade made at the discretion of the small business would add a burden of 4 hours at a cost of $307, basing the calculation on a cost of $76.88 per hour.

EPA has also carefully reviewed the quarterly reports submitted by small entities for the baseline years under consideration to ensure that the correct quantities have been ascribed to each entity for each year. EPA consulted with the small entities in order to reconcile any disparities encountered during the record review.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

C. Executive Order 13045: Children's Health Protection

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it implements specific phaseout schedules established under the CAA and the Montreal Protocol.

D. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or

activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This proposed rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this action.

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.''

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

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposals discussed in this document are directed to economic entities that either produce, import, export, transform, or destroy class II controlled substances, and not to State or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

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.''

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The options discussed are directed to entities that either produce, import, export, transform, or destroy HCFCs, and not to Indian tribal governments or their communities. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Unfunded Mandates Reform Act

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

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Entities in the private sector that either produce, import, export, transform, or destroy HCFCs will be operating under an allowance allocation system very similar to the system selected for CFCs (53 FR 30566, August 12, 1988), which was determined to be the most economically efficient, market-based, and simple to administer in meeting the requirements of the Protocol. Recordkeeping would be somewhat simplified due to the absence of essential use allowances and destruction credits. The experience gained by those entities familiar with the class I allowance allocation system would carry over in the class II allowance allocation system. Thus, today's rule is not subject to the requirements of Section s 202 and 205 of the UMRA.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2014) and a copy may be

obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www/epa.gov/icr.

The recordkeeping and reporting requirements proposed in this rule are similar to those used in the class I allowance system that has been in place for several years. The information collected will be utilized to monitor business compliance with the proposed class II allowance system. The information will also be used to comply with the reporting requirements agreed to by the Parties to the *Montreal Protocol on Substances that Deplete the Ozone Layer.* The information is intended to ensure that the U.S. meets its obligations to control and administer the phaseouts of class II substances under the Protocol and the CAA Amendments of 1990.

Reporting requirements mandated in Section 603 of the CAA relative to class II substances are currently in place in 40 CFR 82.13(n) and (o). New recordkeeping requirements and expanded reporting requirements to ensure accurate expenditures of allowances and trades of allowances are proposed. Responses to the collection of information are mandatory pursuant to Section 114 of the CAA.

Information collected from businesses may be claimed as confidential by clearly identifying the material as confidential. Such information will be treated in accordance with EPA's procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B and will only be disclosed by the means set forth in that subpart.

It is estimated that the annual reporting burden for producers is 1,132 hours and for importers it is 1,800 hours. This includes maintaining records, preparing and submitting quarterly reports on production, import, exports, and claims for transfers of allowances and offsets. The average burden hours per response is estimated to be between 283 and 450 hours. The proposed frequency of response is four times per year and the likely number of respondents will be 7 producers and 14 importers, although some of the producers and some of the importers also function as exporters. The only industry requirements for the start-up phase are an evaluation of the impact of the allowance system and the development of a plan of action. The start-up burden is estimated to be 910 hours for producers and 1,820 hours for importers.

Start-up costs are estimated to amount to $209,882, after which annual industry cost is estimated to be $225,412 to maintain records of production, import, and export; submit quarterly reports to EPA on production, import and export; provide additional information requested by EPA; prepare transfer claims; and submit petitions to import used HCFCs. The latter two functions are not periodical tasks but are initiated by the person based on business decisions.

U.S. agencies, departments or instrumentalities, or related entities involved in space vehicle endeavors, are being asked in the initial application for an exemption to produce or import HCFC–141b for space vehicle or narrow defense needs to identify the quantity of HCFC–141b needed for each control period, an estimate of the number of control periods over which such an exemption would be necessary, and a detailed description of the need met by HCFC–141b in this proposal. EPA is proposing that the entities supply technical descriptions of the processes in which HCFC–141b is being used, the areas where the product will be applied, and why alternatives and substitutes are not sufficient to eliminate the use of HCFC–141b. EPA is also proposing that entities supply a detailed analysis showing why stockpiled, recovered, or recycled quantities are not technically feasible for use and a detailed description of continuing investigations into and progress on possible alternatives and substitutes by the applicants.

Entities granted space vehicle/defense allowances for the production of HCFC–141b products would be required to report quarterly to EPA on the type and application of the products received from the manufacturer and the quantity of HCFC–141b contained in the products. The manufacturer would report quarterly to EPA the quantity and supplier of HCFC–141b received because of space vehicle/defense allowances; the identity of the recipient of the products; and the quantity of HCFC–141b used or contained in the products. It is estimated that the annual reporting burden for the recipient of the allowances is about 20 hours at a cost of about $864 and the burden for the manufacturer is about 20 hours at a cost of about $1,538.

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

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director; Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; 725 17th St., NW; Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 20, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by August 20, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Reporting and recordkeeping requirements.

Dated: July 2, 2001.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Amend § 82.3 as follows:

a. Revise the section heading;

b. Revise the following definitions: ''Article 5 allowances'', ''Baseline consumption allowances'', ''Baseline production allowances'', ''Consumption allowances'', ''Destruction credits'', ''Party'', ''Production allowances'', and ''Transformation credits';

c. Add new definitions in alphabetical order for the terms ''Export production allowances'', ''Individual shipment'', ''Non-objection notice'', ''Source facility'', ''Space vehicle/defense allowances'', ''Unexpended space vehicle/defense allowances'', and ''Unexpended export production allowances''.

The revisions and additions read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Article 5 allowances means the allowances apportioned under § 82.9(a) and § 82.18(a).

Baseline consumption allowances means the consumption allowances apportioned under § 82.6 and § 82.19.

Baseline production allowances means the production allowances apportioned under § 82.5 and § 82.17.

* * * * *

Consumption allowances means the privileges granted by this subpart to produce and import controlled substances; however, consumption allowances may be used to produce controlled substances only in conjunction with production allowances. A person's consumption allowances for class I substances are the total of the allowances obtained under §§ 82.6 and 82.7 and 82.10, as may be modified under § 82.12 (transfer of allowances). A person's consumption allowances for class II substances are the total of the allowances obtained under §§ 82.19 and 82.20, as may be modified under § 82.23.

* * * * *

Destruction credits means those privileges that may be obtained under § 82.9 to produce class I controlled substances.

* * * * *

Export production allowances means the privileges granted by § 82.18 to produce HCFC–141b for export following the phaseout of HCFC–141b on January 1, 2003.

* * * * *

Individual Shipment means the kilograms of a used controlled substance for which a person may make one (1) U.S. Customs entry, not to be disaggregated, as identified in the non-objection letter from the Administrator under § 82.13(g) and § 82.24(c)(4).

* * * * *

Non-Objection Notice means the privilege granted by the Administrator to import a specific individual shipment of used controlled substance in accordance with § 82.13(g) and § 82.24(c) (3) and (4).

* * * * *

Party means any foreign state that is listed in Appendix C to this subpart (pursuant to instruments of ratification, acceptance, or approval deposited with the Depositary of the United Nations Secretariat), as having ratified the specified control measure in effect under the Montreal Protocol. Thus, for purposes of the trade bans specified in § 82.4(l)(2) pursuant to the London Amendments, only those foreign states that are listed in Appendix C to this subpart as having ratified both the 1987 Montreal Protocol and the London Amendments shall be deemed to be Parties. For purposes of the trade bans specified in §§ 82.15(e)(1) pursuant to the 1999 Beijing Amendment, only those foreign states that are listed in the third column of Appendix C to this subpart as having ratified the Copenhagen Amendments shall be deemed to be Parties.

* * * * *

Production allowances means the privileges granted by this subpart to produce controlled substances; however, production allowances may be used to produce controlled substances only in conjunction with consumption allowances. A person's production allowances for class I substances are the total of the allowances obtained under §§ 82.7, 82.5 and 82.9, and as may be modified under § 82.12 (transfer of allowances). A person's production allowances for class II substances are the total of the allowances obtained under § 82.17 and as may be modified under §§ 82.18 and 82.23.

* * * * *

Source Facility means the exact location at which a used controlled substance was recovered from a piece of equipment, including the name of the company responsible for, or owning the location, a contact person at the location, the mailing address for that specific location, and a phone number and a fax number for the contact person at the location.

Space vehicle/defense allowances means the privileges granted to space vehicle program or a defense entity by this subpart to order production of or to import HCFC–141b, deemed critical by the Administrator for use on space vehicles intended for travel beyond the earth's atmosphere or for narrow defense needs, as determined by the Administrator in accordance with § 82.18(j).

* * * * *

Transformation Credits means those privileges that may be obtained under § 82.9 to produce class I controlled substances.

* * * * *

Unexpended export production allowances means export production allowances that have not been used. A person's unexpended export production allowances are the total of the quantity of the export production allowances the person has authorization under § 82.18(b) to hold for that control period, minus the quantity of class II substances that the person has produced at that time during the same control period.

* * * * *

Unexpended space vehicle/defense allowances means space vehicle/defense allowances that have not been used. A person's unexpended space vehicle/defense allowances are the total of the quantity of the space vehicle/defense allowances the person has authorization under § 82.18(j) to hold for that control period, minus the quantity of HCFC–141b that the person has had produced or has had imported at that time during the same control period.

* * * * *

3. Amend § 82.4 as follows:

a. Revise the section heading;

b. Remove paragraphs (n) through (s) and paragraph (u).

c. Redesignate paragraph (t) as (n).

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

4. Amend § 82.5 as follows:

a. Revise the section heading;

b. Remove paragraph (h).

§ 82.5 Apportionment of baseline production allowances for class I controlled substances.

* * * * *

5. Amend § 82.6 as follows:

a. Revise the section heading;

b. Remove paragraph (h).

§ 82.6 Apportionment of baseline consumption allowances for class I controlled substances.

§ 82.8 [Removed]

6. Section 82.8 is removed.

7. Section 82.9 is amended by revising the section heading as follows:

§ 82.9 Availability of production allowances in addition to baseline production allowances for class I controlled substances.

8. Section 82.10 is amended by revising the section heading as follows:

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances for class I controlled substances.

9. Section 82.11 is amended by revising the section heading as follows:

§ 82.11 Exports of class I controlled substances to Article 5 Parties.

10. Section 82.12 is amended by revising the section heading as follows:

§ 82.12 Transfers of allowances for class I controlled substances.

11. Amend § 82.13 as follows:

a. Revise the section heading;

b. Remove paragraphs (n) and (o).

c. Redesignate paragraphs (p) through (z) as (n) through (x)

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

12. Add §§ 82.15 through 82.24 to subpart A to read as follows:

§ 82.15 Prohibitions for class II controlled substances.

(a) *Production.* (1) Effective January 1, 2002, no person may produce class II substances in excess of the quantity of unexpended production allowances, unexpended Article 5 allowances, unexpended export production allowances, or unexpended space vehicle/defense allowances held by that person for that substance under the authority of this subpart at any time in any control period, unless the substances are transformed or destroyed domestically or by a person of another Party. Every kilogram of excess production constitutes a separate violation of this subpart.

(2) Effective January 1, 2002, no person may produce class II substances in excess of the quantity of unexpended consumption allowances, unexpended Article 5 allowances, unexpended export production allowances, or unexpended space vehicle/defense allowances held by that person under the authority of this subpart at any time in any control period, unless the substances are transformed or destroyed domestically or by a person of another Party, or unless they are produced using an exception granted in paragraph (f) of this section. Every kilogram of excess production constitutes a separate violation of this subpart.

(3) Effective January 1, 2002, no person may use production allowances to produce a quantity of class II substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class II substances. No person may use consumption allowances to produce a quantity of class II substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class II substances.

(4) Effective January 1, 2003, no person may produce HCFC–141b except for use in a process resulting in its transformation or its destruction, for export under § 82.18(a) using unexpended Article 5 allowances, for export under § 82.18(b) using unexpended export production allowances, for space vehicle/defense needs using unexpended space vehicle/defense allowances, or for exceptions permitted in paragraph (f) of this section.

(5) Effective January 1, 2010, no person may produce HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, for use in equipment manufactured before January 1, 2010, for export under § 82.18(a) using unexpended Article 5 allowances, or for exceptions permitted in paragraph (f) of this section.

(6) Effective January 1, 2015, no person may produce class II substances not previously controlled, for any purpose other than for use in a process resulting in their transformation or their destruction, for use as a refrigerant in equipment manufactured before January 1, 2020, for export under § 82.18(a) using unexpended Article 5 allowances, or for exceptions permitted in paragraph (f) of this section.

(7) Effective January 1, 2020, no person may produce HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, for export under § 82.18(a) using unexpended Article 5 allowances, or for exceptions permitted in paragraph (f) of this section.

(8) Effective January 1, 2030, no person may produce class II substances, for any purpose other than for use in a process resulting in their transformation or their destruction, for export under § 82.18(a) using unexpended Article 5 allowances, or for exceptions permitted in paragraph (f) of this section.

(9) Effective January 1, 2040, no person may produce class II substances for any purpose other than for use in a process resulting in their transformation or their destruction, or for exceptions permitted in paragraph (f) of this section.

(b) *Import.* (1) Effective January 1, 2002, no person may import class II substances (other than transhipments, heels or used class II substances), except for use in a process resulting in their transformation or their destruction, in excess of the quantity of unexpended consumption allowances held by that person under the authority of this subpart, at any time in any control period. Every kilogram of excess importation constitutes a separate violation of this subpart.

(2) Effective January 1, 2002, no person may import, at any time in any control period, a used class II substance, without having submitted a petition to the Administrator and received a non-objection notice from the Administrator in accordance with § 82.24(c)(3) and (4). A person issued a non-objection notice for the import of an individual shipment of used class II substances may not transfer or confer the right to import, and may not import any more than the exact quantity (in kilograms) of the used class II substance stated in the non-objection notice. Every kilogram of importation of used class II substance in excess of the quantity stated in the non-objection notice issued by the Administrator in accordance with § 82.24(c)(3) and (4) constitutes a separate violation.

(3) Effective January 1, 2003, no person may import HCFC–141b (other than transhipments, heels or used class II substances) in excess of the quantity of unexpended space vehicle/defense allowances held by that person except for use in a process resulting in its transformation or its destruction, or for exceptions permitted in paragraph (f) of this section.

(4) Effective January 1, 2010, no person may import HCFC–22 or HCFC–142b (other than transhipments, heels or used class II substances) for any purpose other than for use in a process resulting in their transformation or their destruction, for exceptions permitted in paragraph (f) of this section, or for use

in equipment manufactured prior to January 1, 2010.

(5) Effective January 1, 2015, no person may import class II substances not subject to the requirements of paragraph (b)(3) or (4) of this section (other than transhipments, heels or used class II substances) for any purpose other than for use in a process resulting in their transformation or their destruction, for exceptions permitted in paragraph (f) of this section, or for use as a refrigerant in equipment manufactured prior to January 1, 2020.

(6) Effective January 1, 2020, no person may import HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, or for exceptions permitted in paragraph (f) of this section.

(7) Effective January 1, 2030, no person may import class II substances not subject to the requirements of paragraph (b)(3) or (4) of this section for any purpose other than for use in a process resulting in their transformation or their destruction, or for exceptions permitted in paragraph (f) of this section.

(c) *Post-phaseout limits to Article 5 countries.* Effective January 1, 2003 for HCFC–141b; January 1, 2010 for HCFC–22 and HCFC–142b; and January 1, 2015 for all other HCFCs, no person may produce class II substances for export to Article 5 countries in excess of unexpended Article 5 allowances, as allocated under § 82.18(a), and unexpended export allowances, as allocated under § 82.18(b). No person may introduce into interstate commerce in the U.S. any class II substance produced explicitly for export to an Article 5 country.

(d) *Post-phaseout limits to non-Article 5 countries.* Effective January 1, 2003, no person may produce HCFC–141b for export to non-Article 5 countries in excess of unexpended export production allowances, as allocated under § 82.18(b). No person may introduce into interstate commerce in the U.S. any HCFC–141b produced using export production allowances.

(e) *Violations.* Every kilogram of a class II substance, and every class II product, imported or exported in contravention of this subpart constitutes a separate violation of this subpart. No person may:

(1) Import or export any quantity of a controlled substance listed as class II, in Appendix A to this subpart, from or to any foreign state not Party to the Copenhagen Amendments (as noted in Appendix C, Annex l, to this subpart), unless that foreign state is complying with the Copenhagen Amendments.

(2) [Reserved]

(f) Exemptions.

(1) Medical devices.

(2) [Reserved]

§ 82.16 Phaseout schedule of class II controlled substances.

(a) Effective January 1, 2002, each person is granted the specified percentage of the baseline production and consumption allowances allocated under §§ 82.17 and 82.19 in each control period as indicated in the table at the end of this section.

(b) On January 1 of the phaseout year designated for each class II substance, EPA will deduct from each company all baseline consumption and production allowances granted in 2002 for that substance. EPA will also deduct baseline consumption and production allowances received in a permanent trade after January 1, 2002 for that substance. Deductions do not include:

(1) Article 5 allowances granted under § 82.18(a).

(2) Export production allowances granted under § 82.18(b).

(3) Space vehicle/defense allowances granted under § 82.18(j).

(4) Baseline consumption and production allowances traded away permanently after January 1, 2002.

(5) Any other allowances associated with exceptions to production and import bans for class II substances.

(c) The following table lists the phase out schedule of class II controlled substances:

Control period	Percent of HCFCs (except for 141b, 22, and 142b)	Percent of HCFC–141b	Percent of HCFC–22 & HCFC–142b
2002	100	100	100
2003	100	[d] 0	100
2004	100a	[d] 0	100
2005	[a] 100	[d] 0	100
2006	[a] 100	[d] 0	100
2007	[a] 100	[d] 0	100
2008	[a] 100	[d] 0	100
2009	[a] 100	[d] 0	100
2010	[a] 100	[d] 0	[b d] 0
2011	[a] 100	[d] 0	[d] 0
2012	[a] 100	[d] 0	[d] 0
2013	[a] 100	[d] 0	[d] 0
2014	[a] 100	[d] 0	[d] 0
2015	[c] 0	[d] 0	[d] 0

[a] Allocations may be reduced pro rata for these years if EPA determines that Montreal Protocol consumption reduction requirements cannot be met through this schedule.

[b] On and after January 1, 2010, HCFC–22 and HCFC–142b may still be produced for use in equipment manufactured before January 1, 2010, providing the producer has adequate production and consumption allowances.

[c] On and after January 1, 2015, all other HCFCs, not previously phased out, may still be produced as a refrigerant for use in refrigeration equipment manufactured before January 1, 2020, providing the producer has adequate production and consumption allowances.

[d] Export production allowances may be available after the phaseout under § 82.18.

§ 82.17 Apportionment of baseline production allowances for class II controlled substances.

Effective January 1, 2002, a person who produced class II substances in any of the years 1989, 1994, 1995, 1996, and 1997, and who accurately reported such activity as required by EPA, is apportioned baseline production allowances based on the person's year of highest total ODP-weighted consumption as set forth in the following table. Companies whose names have been changed are listed under their official name in effect during the baseline year. Additional companies for whom EPA does not have complete information as of this

proposal, or who EPA determines are eligible for a late entrant exemption, may be listed with allocations in the final rule, pending receipt of such information or EPA determination:

Person	Controlled substance	Allowances (kg.)
Allied (Honeywell)	HCFC–22	36,094,556
	HCFC–124	3,227,086
	HCFC–141b	27,719,366
	HCFC–142b	2,334,508
Ausimont	HCFC–142b	4,418,767
DuPont	HCFC–22	52,072,484
	HCFC–123	10,410
	HCFC–124	6,390
	HCFC–141b	10,464
	HCFC–142b	53,978
Elf Atochem (ATOFINA Chemicals)	HCFC–22	22,230,306
	HCFC–141b	23,801,431
	HCFC–142b	15,577,099
MDA	HCFC–22	2,301,966

§ 82.18 Availability of production allowances in addition to baseline production allowances for class II controlled substances.

(a) Effective January 1, 2003 for HCFC–141b; January 1, 2010 for HCFC–22 and HCFC–142b; and 2015 for all other HCFCs, a person apportioned baseline production allowances under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances for the specified HCFC or HCFCs for each control period up until January 1, 2030, to be used for the production of the specified HCFC or HCFCs for export only to foreign states listed in Appendix E to this subpart. The quantity produced for export under this paragraph must not exceed the quantity of Article 5 allowances held by that person. Inter-pollutant trades of Article 5 allowances may only be made for other Article 5 allowances.

(1) Each person who exports a class II substance that was produced with an Article 5 allowance to an Article 5 country must submit a notice to the Administrator of such exports (except exports of used class II substances) at the end of the quarter, as set forth in § 82.24(d)(1) and (d)(3).

(2) [Reserved]

(b) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC–141b under § 82.17 is also apportioned export production allowances equal to 100 percent of their baseline production allowances for HCFC–141b for each control period up until December 31, 2009, to be used for the production of HCFC–141b for export only, to foreign states listed in the third column of Appendix C to this subpart (Parties to the Copenhagen Amendments). The quantity produced for export under this paragraph must not exceed the quantity of unexpended export production allowances held by that person at that time for that control period. Inter-pollutant trades of export production allowances may only be made for other export production allowances.

(1) Each person who exports HCFC–141b that was produced with export production allowances must submit a notice to the Administrator of such exports at the end of the quarter, as set forth in § 82.24(d)(2).

(2) [Reserved]

(c) Effective January 1, 2002, a person may increase or decrease production allowances through trading allowed under § 82.23(a), (b), (c) and (d). Trades cannot be made for production of any substance after that class II substance's phaseout date, except as provided under paragraphs (a) and (b) of this section.

(d) Effective January 1, 2002, a person may increase its production allowances, its export production allowances, or its Article 5 allowances, through trades with another Party to the Protocol as set forth in this paragraph (d), and as allowed under § 82.23(d). Trades cannot be made for production of any substance after that class II substance's phaseout date, except as provided under paragraph (a) of this section (regarding Article 5 allowances) and paragraph (b) of this section (regarding export production allowances). A nation listed in the third column of Appendix C to this subpart (Parties to the Copenhagen Amendments) must agree either to transfer to the person for the current control period some quantity of production that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some quantity of production that the person is permitted under this subpart. If the class II substance is to be sold to the Party from whom the allowances are received, the person need not expend its consumption allowances allocated under § 82.19 in order to produce with the additional production allowances. If the class II substance is to be sold in the U.S. or to another Party (not the Party transferring the allowances), the person need not expend its consumption allowances allocated under § 82.19 in order to produce with the additional production allowances.

(e) *Trade from a Party—Information Requirements.* A person must submit the following information to the Administrator:

(1) A signed document from the principal diplomatic representative in that nation's embassy in the U.S. stating that the appropriate authority within that nation has established or revised production limits for the nation. The production limit must be equal to the lowest of the following three production quantities:

(i) The maximum production that the nation is allowed under the Protocol minus the quantity (in kilograms) transferred;

(ii) The maximum production that is allowed under the nation's applicable domestic law minus the quantity (in kilograms) transferred; or

(iii) The average of the nation's actual national production level for the three years prior to the transfer minus the production transferred.

(2) A transfer request that includes a true copy of this document and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and quantity (in kilograms) of production being transferred;

(v) Documentation that the Party possesses the necessary quantity of unexpended production rights;

(vi) The control period(s) to which the transfer applies; and

(vii) For increased production intended for export to the Party from whom the allowances would be received, a signed statement of intent to export to the Party.

(f) *Trade to a Party—Information Requirements.* A person must submit the following information to the Administrator:

(1) A transfer request that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and quantity (in kilograms) of allowable production being transferred; and

(v) The control period(s) to which the transfer applies.

(g) *Review of transfer request to a Party.* After receiving a transfer request that meets the requirements of paragraph (f) of this section, the Administrator may, at his/her discretion, consider the following factors in deciding whether to approve such a transfer:

(1) Possible creation of domestic economic hardship;

(2) Possible effects on trade;

(3) Potential environmental implications; and

(4) The total quantity of unexpended production allowances held by U.S. entities.

(h) *Notice of trade.* If the request meets the requirement of paragraph (e) of this section for trades from Parties and paragraphs (f) and (g) of this section for trades to Parties, the Administrator will issue the person a notice. The notice will either grant or deduct production allowances or export production allowances or Article 5 allowances and specify the control period to which the transfer applies. The Administrator may disapprove the transfer request contingent on the consideration of factors listed in paragraph (d)(3) of this section for trades to Parties.

(1) Trade from a Party. The Administrator will issue a notice revising the allowances held by the transferee to equal the unexpended production allowances or unexpended Article 5 allowances held by the transferee under this subpart plus the quantity of allowable production transferred from the Party.

(2) Trade to a Party. The Administrator will issue a notice revising the production limit for the transferor to equal the lesser of:

(i) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the transferor minus the quantity transferred; or

(ii) The quantity derived in paragraph (i) of this section, minus the amount derived from the following calculation:

(A) The total U.S. allowable production of the class II substance being traded minus the three-year average of the actual annual U.S. production of the class II substance prior to the control period of the transfer.

(B) [Reserved]

(i) Revised notices of production limits. If after one person obtains approval of a trade of allowable production of a class II substance to a Party and other persons obtain approval for trades of the same class II substance during the same control period, the Administrator will issue revised notices.

(1) Production limit for subsequent transferors. The notices will revise the production limits for each of the other persons trading to equal the lesser of:

(i) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the transferor under this subpart minus the quantity transferred; or

(ii) The result of the following set of calculations:

(A) The total U.S. allowable production of the class II substance minus the three-year average of the actual annual U.S. production of the class II substance prior to the control period of the transfer;

(B) The quantity transferred divided by the total quantity transferred by all the other persons trading the same class II substance in the same control period;

(C) The result of paragraph (i)(1)(ii)(A) of this section multiplied by the result of paragraph (i)(1)(ii)(B) of this section;

(D) The quantity derived in paragraph (i) of this section, minus the result of paragraph (i)(1)(ii)(C) of this section;

(2) Production limit for previous transferors. The Administrator will also issue a notice revising the production limit for each transferor who previously obtained approval of a trade of the class II substance in the same control period to equal the result of the following set of calculations:

(i) The total U.S. allowable production of the class II substance minus the three-year average of the actual annual U.S. production of the class II substance prior to the control period of the transfer;

(ii) The quantity transferred by the person divided by the quantity transferred by all the persons who have traded that class II substance in that control period;

(iii) The result of paragraph (i)(2)(i) of this section multiplied by the result of paragraph (i)(2)(ii) of this section.

(iv) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the person plus the result of paragraph (i)(2)(iii) of this section;

(3) Effective date of revised production limits. The change in production allowances, export production allowances or Article 5 allowances will be effective on the date that the notice is issued.

(j) Petition for space vehicle/defense allowances. Effective January 1, 2002, an agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity, may petition the Director of the Office of Atmospheric Programs for space vehicle/defense allowances for HCFC–141b in accordance with this paragraph (j) and with § 82.15(a)(4).

(1) The agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity must submit the following information to the EPA HCFC Manager prior to July 1, 2002:

(i) Name and address of U.S. government entity or non-governmental space vehicle entity; name of contact person, phone number, fax number and e-mail address;

(ii) Quantity (in kilograms) of HCFC–141b needed for the control period beginning January 1, 2003 until December 31, 2005;

(iii) A description of the space vehicle/defense need met by the use of HCFC–141b;

(iv) A technical description of the processes in which HCFC–141b is being used;

(v) A technical description of the area where the product will be applied;

(vi) A technical description of why alternatives and substitutes are not sufficient to eliminate the space vehicle/defense use of HCFC–141b;

(vii) A detailed analysis showing why stockpiled, recovered or recycled quantities are deemed to be technically infeasible for use;

(viii) An estimate of the number of control periods over which such an exemption would be necessary; and

(ix) A detailed description of continuing investigations into possible alternatives and substitutes.

(2) Within 90 days of receipt of the petition, the Director of the Office of Atmospheric Programs will issue to an agency, department, or instrumentality of the U.S., or non-governmental space vehicle entity that has petitioned for space vehicle/defense allowances for HCFC–141b, based on information received in accordance with paragraph (j)(1) of this section, a notice indicating one of the following:

(i) The Director of the Office of Atmospheric Programs may decide to grant space vehicle/defense allowances if he/she determines that the space vehicle/defense allowances are necessary to maintain either safety or operational viability:

(A) The notice will indicate the quantity (in kilograms) that he/she will grant for the specified 3-year control period; and

(B) The grant of space vehicle/defense allowances will be effective on the date that the notice specified in paragraph (j)(2) of this section is issued, and shall not be applicable after December 31, 2009, unless otherwise authorized by EPA.

(ii) The Director of the Office of Atmospheric Programs may request additional information if he/she determines:

(A) The information received in accordance with paragraph (j)(1) of this section is not sufficient to make a determination.

(B) [Reserved]

(iii) The Director of the Office of Atmospheric Programs may decide not to grant space vehicle/defense allowances if he/she determines:

(A) The space vehicle/defense interest can be met by the use of a substance other than HCFC–141b;

(B) The space vehicle/defense interest can be met by the use of existing supplies of HCFC–141b;

(C) There is evidence of fraud or misrepresentation;

(D) Approval of the allowances would be inconsistent with the Montreal Protocol or Decisions of the Parties;

(E) Approval of the allowances would be inconsistent with the Clean Air Act Amendments of 1990; or

(F) Approval of the allowances may reasonably be expected to endanger human health or the environment.

(3) If the Director of the Office of Atmospheric Programs decides not to grant the request for space vehicle/defense allowances for any of the reasons stated in paragraph (j)(2)(iii) of this section, the Director of the Office of Atmospheric Programs will issue an objection letter disallowing the request for space vehicle/defense allowances. Within ten working days after receipt of the objection letter, the requestor may file a one-time appeal, with supporting reasons, with the Director of the Office of Atmospheric Programs. The Director of the Office of Atmospheric Programs may affirm the disallowance or grant an allowance, as she/he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after receipt of the objection letter, the disallowance will be final on that day.

(4) The total quantity of HCFC–141b produced or imported for space vehicle or narrow defense needs during each year is not to exceed 1 percent of the aggregate of HCFC–141b baselines for one year.

(5) The space vehicle/defense allowance allocation may be renewed every three years after the original petition and the petition for renewal must contain the following information:

(i) Name and address of U.S. government entity or non-governmental space vehicle/defense entity; name of contact person and phone and fax numbers and e-mail address;

(ii) Quantity (in kilograms) of HCFC–141b needed for the control period;

(iii) A description of the space vehicle/defense need met by the use of HCFC–141b;

(iv) A technical description of the process in which HCFC–141b is still being used;

(v) A technical description of the area where the product is still being applied;

(vi) A technical description of why alternatives and substitutes are still not sufficient to eliminate the space vehicle/defense use of HCFC–141b;

(vii) A detailed analysis showing why stockpiled, recovered or recycled quantities are still deemed to be technically and economically infeasible for use; and

(viii) A detailed description of continuing investigations into possible alternatives and substitutes.

(6) For the control period from January 1, 2006 through December 31, 2008, the agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity must submit the petition for renewal by March 1, 2005.

§ 82.19 Apportionment of baseline consumption allowances for class II controlled substances.

(a) Effective January 1, 2002, a person who produced, imported, or produced and imported class II substances, and accurately reported such activity to EPA as required, in any of the years 1989, 1994, 1995, 1996, and 1997, is apportioned baseline consumption allowances based on the year of the person's highest total ODP-weighted consumption as set forth in paragraphs (1) through (28) of this section. Companies whose names have been changed are listed under their official name in effect during the baseline year. Additional companies for whom EPA does not have complete information as of July 20, 2001, or who EPA determines are eligible for a late entrant exemption, may be listed with allocations in the final rule, pending receipt of such information or EPA determination:

Person	Controlled substance	Allowances (kg)
ABCO	HCFC–22	253,032
AGA	HCFC–225ca	109,653
	HCFC–225cb	134,024
Air Systems	HCFC–22	12,240
Allied (Honeywell)	HCFC–22	32,056,219
	HCFC–124	2,958,382
	HCFC–141b	18,793,538
	HCFC–142b	1,191,783
Altair	HCFC–22	241,367
Ausimont	HCFC–142b	4,418,767
Automatic Equipment	HCFC–22	48,989
Condor	HCFC–22	603,374
Continental	HCFC–141b	18,400
DuPont	HCFC–22	46,599,488

Person	Controlled substance	Allowances (kg)
	HCFC–123	71,063
	HCFC–124	6,302
	HCFC–141b	8,196
	HCFC–142b	47,820
Elf Atochem	HCFC–22	26,741,356
(ATOFINA Chemicals)	HCFC–141b	23,010,714
	HCFC–142b	15,101,025
HG Refrigeration	HCFC–22	36,291
ICC	HCFC–141b	73,568
ICI	HCFC–22	2,306,278
Kivlan (Dynatemp)	HCFC–22	1,837,718
Klomar	HCFC–22	7,776
MDA	HCFC–22	2,301,966
Mondy-Global	HCFC–22	255,258
National Refrigerants	HCFC–22	4,963,713
	HCFC–123	76,520
	HCFC–124	204,980
Refricenter	HCFC–22	345,350
Refricentro	HCFC–22	41,645
Rhone-Poulenc	HCFC–22	47,180
R-Lines	HCFC–22	57,217
Saez	HCFC–22	34,360
Solvay	HCFC–22	284,370
	HCFC–124	274,990
	HCFC–141b	3,568,700
Tesco	HCFC–22	43,520
Tulstar	HCFC–141b	78,720

(b) [Reserved]

§ 82.20 Availability of consumption allowances in addition to baseline consumption allowances for class II controlled substances.

(a) Effective January 1, 2002, a person may obtain at any time during the control period, in accordance with the provisions of this subsection, consumption allowances equivalent to the quantity of class II substances (other than used class II substances or transhipments) that the person has exported from the U.S. and its territories to a foreign state listed in the third column of Appendix C to this subpart (Parties to the Copenhagen Amendments).

(1) The exporter must submit to the Administrator a request for consumption allowances setting forth the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity (in kilograms) and type of class II substances reported;

(v) The source of the class II substances and the date purchased;

(vi) The date on which, and the port from which, the class II substances were exported from the U.S. or its territories;

(vii) The country to which the class II substances were exported;

(viii) A copy of the bill of lading and the invoice indicating the net quantity (in kilograms) of class II substances shipped and documenting the sale of the class II substances to the purchaser;

(ix) The commodity code of the class II substances reported; and

(x) A written statement from the producer that the class II substances were produced with expended allowances.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section and will issue a notice.

(i) The Administrator will determine the quantity of class II substances that the documentation verifies was exported and issue consumption allowances equivalent to the quantity of class II substances that were exported.

(A) The grant of the consumption allowances will be effective on the date the notice is issued.

(B) The consumption allowances will be granted to the person the exporter indicates, whether it is the producer or the exporter.

(ii) The Administrator will issue a notice that the consumption allowances are not granted if the Administrator determines that the information and documentation do not satisfactorily substantiate the exporter's claims.

(b) Effective January 1, 2002, a person may increase consumption allowances through trading allowed under § 82.23(a), (b), and (c).

§ 82.21 [Reserved]

§ 82.22 [Reserved]

§ 82.23 Transfers of allowances of class II controlled substances.

(a) *Inter-company transfers.* (1) Effective January 1, 2002, a person (''transferor'') may transfer to any other person (''transferee'') any quantity of the transferor's class II consumption allowances, production allowances, export production allowances, or Article 5 allowances, as follows:

(i) The transferor must submit to the Administrator a transfer claim setting forth the following:

(A) The identities and addresses of the transferor and the transferee;

(B) The name and telephone numbers of contact persons for the transferor and the transferee;

(C) The type of allowances being transferred, including the names of the class II substances for which allowances are to be transferred;

(D) The quantity (in kilograms) of allowances being transferred;

(E) The control period(s) for which the allowances are being transferred;

(F) The quantity of unexpended allowances of the type and for the control period being transferred that the transferor holds under authority of this subpart on the date the claim is submitted to EPA; and

(G) For trades of consumption allowances, production allowances, export production allowances, or Article 5 allowances, the quantity of the 0.1

percent offset applied to the unweighted quantity traded that will be deducted from the transferor's allowance balance.

(ii) The Administrator will determine whether the records maintained by EPA indicate that the transferor possesses unexpended allowances sufficient to cover the transfer claim on the date the transfer claim is processed. The transfer claim is the quantity (in kilograms) to be transferred plus, in the case of transfers of production or consumption allowances, 0.1 percent of that quantity. The Administrator will take into account any previous transfers, any production, and allowable imports and exports of class II substances reported by the transferor. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) The Administrator will issue a notice indicating that EPA does not object to the transfer if EPA's records show that the transferor has sufficient unexpended allowances to cover the transfer claim. In the case of transfers of production or consumption allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. In the case of transfers of export production or Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances, respectively, by the quantity to be transferred. The transferor and the transferee may proceed with the transfer when EPA issues a no objection notice. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee, where applicable, will be held liable for any knowing violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(B) The Administrator will issue a notice disallowing the transfer if EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination. Either party may file a notice of appeal, with supporting reasons, with the Administrator within 10 working days after receipt of notification. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) The transferor and transferee may proceed with the transfer if the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(1)(ii) of this section. In the case of transfers of production or consumption allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. In the case of transfers of export production allowances or Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. If EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and/or the transferee, where applicable, will be held liable for any knowing violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(b) *Inter-pollutant transfers.* (1) Effective January 1, 2002, a person (transferor) may convert consumption allowances or production allowances for one class II substance to the same type of allowance for another class II substance listed in Appendix B of this subpart, following the procedures described in paragraph (b)(3) of this section.

(2) Inter-pollutant transfers will be permitted at any time during the control period and during the 45 days after the end of a control period.

(3) The transferor must submit to the Administrator a transfer claim that includes the following:

(i) The identity and address of the transferor;

(ii) The name and telephone number of a contact person for the transferor;

(iii) The type of allowances being converted, including the names of the class II substances for which allowances are to be converted;

(iv) The quantity (in kilograms) and type of allowances to be converted;

(v) The quantity (in kilograms) of allowances to be subtracted from the transferor's unexpended allowances for the first class II substance, to be equal to 100.1 percent of the quantity of allowances converted;

(vi) The quantity (in kilograms) of allowances to be added to the transferor's unexpended allowances for the second class II substance, to be equal to the quantity (in kilograms) of allowances for the first class II substance being converted multiplied by the quotient of the ozone depletion potential of the first class II substance divided by the ozone depletion potential of the second class II substance, as listed in Appendix B to this subpart;

(vii) The control period(s) for which the allowances are being converted; and

(viii) The quantity (in kilograms) of unexpended allowances of the type and for the control period being converted that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA.

(4) The Administrator will determine whether the records maintained by EPA indicate that the convertor possesses unexpended allowances sufficient to cover the transfer claim on the date the transfer claim is processed (i.e., the quantity (in kilograms) to be converted plus 0.1 percent of that quantity (in kilograms)). EPA will take into account any previous transfers, any transfers, and any production, imports (not including transshipments or used class II substances), or exports (not including transhipments or used class II substances) of class II substances reported by the convertor. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the convertor as follows:

(i) The Administrator will issue a notice indicating that EPA does not object to the transfer if EPA's records show that the convertor has sufficient unexpended allowances to cover the transfer claim. EPA will reduce the transferor's balance of unexpended allowances by the quantity to be converted plus 0.1 percent of that quantity (in kilograms). When EPA issues a no objection notice, the transferor may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(ii) The Administrator will issue a notice disallowing the transfer if EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination. The transferor may file a notice of appeal, with supporting reasons, with the Administrator within 10 working days after receipt of notification. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) The transferor may proceed with the transfer if the Administrator does not respond to a transfer claim within the three working days specified in

paragraph (b)(4) of this section. EPA will reduce the transferor's balance of unexpended allowances by the quantity (in kilograms) to be converted plus 0.1 percent of that quantity (in kilograms). The transferor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or credits to cover the claim.

(c) *Inter-company transfers and Inter-pollutant transfers.* (1) If a person requests an inter-company transfer and an inter-pollutant transfer simultaneously, the quantity (in kilograms) subtracted from the transferor's unexpended production or consumption allowances for the first class II substance will be equal to 100.1 percent of the quantity (in kilograms) of allowances that are being converted and transferred.

(2) [Reserved]

(d) *Transfers of class II production between Parties.* (1) A person may increase or decrease its production allowances, export production allowances, or Article 5 allowances by trading such allowances with another Party to the Protocol, in accordance with the provisions in § 82.18(d).

(2) [Reserved]

§ 82.24 Recordkeeping and reporting requirements for class II controlled substances.

(a) *Recordkeeping and reporting.* Any person who produces, imports, exports, transforms, or destroys class II substances must comply with the following recordkeeping and reporting requirements:

(1) Reports required by this section must be mailed to the Administrator within 15 days of the end of the applicable reporting period, unless otherwise specified.

(2) Records and copies of reports required by this section must be retained for three years.

(3) Quantities of class II substances must be stated in terms of kilograms in reports required by this section.

(4) Reports and records required by this section may be used for purposes of compliance determinations. These requirements are not intended as a limitation on the use of other evidence admissible under the Federal Rules of Evidence. Failure to provide the reports, petitions and records required by this section and to certify the accuracy of the information in the reports, petitions and records required by this section, will be considered a violation of this subpart. False statements made in reports, petitions and records will be considered violations of Section 113 of the Clean Air Act and under 18 U.S. Code Section 1001.

(b) *Producers.* Persons (''producers'') who produce class II substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Reporting—Producers. For each quarter, each producer of a class II substance must provide the Administrator with a report containing the following information:

(i) The quantity (in kilograms) of production of each class II substance used in processes resulting in their transformation by the producer and the quantity (in kilograms) intended for transformation by a second party;

(ii) The quantity (in kilograms) of production of each class II substance used in processes resulting in their destruction by the producer and the quantity (in kilograms) intended for destruction by a second party;

(iii) The expended allowances for each class II substance;

(iv) The producer's total of expended and unexpended production allowances, consumption allowances, export production allowances, and Article 5 allowances at the end of that quarter;

(v) The quantity (in kilograms) of class II substances sold or transferred during the quarter to a person other than the producer for use in processes resulting in their transformation or eventual destruction;

(vi) A list of the quantities and names of class II substances exported, by the producer or by other U.S. persons, to a Party to the Protocol that will be transformed or destroyed and therefore were not produced expending production or consumption allowances;

(vii) For transformation in the U.S. or by a person of another Party, one copy of a transformation verification from the transformer for a specific class II substance and a list of additional quantities shipped to that same transformer for the quarter;

(viii) For destruction in the U.S. or by a person of another Party, one copy of a destruction verification paragraph (e) of this section for a particular destroyer, destroying the same class II substance, and a list of additional quantities shipped to that same destroyer for the quarter;

(ix) In cases where the producer produced class II substances using export production allowances, a list of U.S. entities that purchased those class II substances and exported them to a Party to the Protocol;

(x) In cases where the producer produced class II substances using Article 5 allowances, a list of U.S. entities that purchased those class II substances and exported them to Article 5 countries; and

(xi) A list of the space vehicle/defense allowance holders from whom orders were placed and the quantity (in kilograms) of HCFC–141b requested and produced.

(2) Recordkeeping—Producers. Every producer of a class II substance during a control period must maintain the following records:

(i) Dated records of the quantity (in kilograms) of each class II substance produced at each facility;

(ii) Dated records of the quantity (in kilograms) of class II substances produced for use in processes that result in their transformation or for use in processes that result in their destruction;

(iii) Dated records of the quantity (in kilograms) of class II substances sold for use in processes that result in their transformation or for use in processes that result in their destruction;

(iv) Dated records of the quantity (in kilograms) of class II substances produced with export production allowances or Article 5 allowances;

(v) Copies of invoices or receipts documenting sale of class II substances for use in processes that result in their transformation or for use in processes that result in their destruction;

(vi) Dated records of the quantity (in kilograms) of each class II substance used at each facility as feedstocks or destroyed in the manufacture of a class II substance or in the manufacture of any other substance, and any class II substance introduced into the production process of the same class II substance at each facility;

(vii) Dated records of the quantity (in kilograms) of raw materials and feedstock chemicals used at each facility for the production of class II substances;

(ix) Dated records of the shipments of each class II substance produced at each plant;

(x) The quantity (in kilograms) of class II substances, the date received, and names and addresses of the source of used materials containing class II substances which are recycled or reclaimed at each plant;

(xi) Records of the date, the class II substance, and the estimated quantity of any spill or release of a class II substance that equals or exceeds 100 pounds;

(xii) Transformation verification in the case of transformation, or the destruction verification in the case of destruction paragraph (e) of this section

showing that the purchaser or recipient of a class II substance, in the U.S. or in another country that is a Party, certifies the intent to either transform or destroy the class II substance, or sell the class II substance for transformation or destruction in cases when allowances were not expended;

(xiii) Written verifications from a U.S. purchaser that the class II substance was exported to a Party to the Copenhagen Amendments, in cases where export production allowances were expended to produce the class II substance;

(xiv) Written verifications from a U.S. purchaser that the class II substance was exported to an Article 5 country in cases where Article 5 allowances were expended to produce the class II substance;

(xv) Written verifications from a U.S. purchaser that HCFC–141b was manufactured for the express purpose of meeting critical space vehicle/defense needs in accordance with information submitted under § 82.18(j), in cases where space vehicle/defense allowances were expended to produce the HCFC–141b.

(3) For any person who fails to maintain the records required by this paragraph, or to submit the report required by this paragraph, the Administrator may assume that the person has produced at full capacity during the period for which records were not kept, for purposes of determining whether the person has violated the prohibitions at § 82.15.

(c) *Importers.* Persons (''importers'') who import class II substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Reporting—Importers. For each quarter, an importer of a class II substance (including importers of used class II substances) must submit to the Administrator a report containing the following information:

(i) Summaries of the record required in paragraphs (c)(2)(i) through (xiv) of this section for the previous quarter;

(ii) The total quantity (in kilograms) imported of each class II substance for that quarter;

(iii) The commodity code for the class II substances imported, which must be one of those listed in Appendix K to this subpart;

(iv) The quantity (in kilograms) of those class II substances imported that are used class II substances.

(v) The quantity (in kilograms) of class II substances imported for that quarter and totaled by chemical for the control period to date;

(vi) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter;

(vii) The quantity (in kilograms) of class II substances imported for use in processes resulting in their transformation or destruction;

(viii) The quantity (in kilograms) of class II substances sold or transferred during that quarter to each person for use in processes resulting in their transformation or eventual destruction; and

(ix) Transformation verifications showing that the purchaser or recipient of imported class II substances intends to transform those substances or destruction verifications showing that the purchaser or recipient intends to destroy the class II substances (as provided in paragraph (e) of this section).

(2) Recordkeeping—Importers. An importer of a class II substance (including used class II substances) must maintain the following records:

(i) The quantity (in kilograms) of each class II substance imported, either alone or in mixtures, including the percentage of each mixture which consists of a class II substance;

(ii) The quantity (in kilograms) of those class II substances imported that are used and the information provided with the petition as required under paragraph (c)(3) of this section;

(iii) The quantity (in kilograms) of class II substances other than transhipments or used substances imported for use in processes resulting in their transformation or destruction;

(iv) The quantity (in kilograms) of class II substances other than transhipments or used substances imported and sold for use in processes that result in their destruction or transformation;

(v) The date on which the class II substances were imported;

(vi) The port of entry through which the class II substances passed;

(vii) The country from which the imported class II substances were imported;

(viii) The commodity code for the class II substances shipped, which must be one of those listed in Appendix K to this subpart;

(ix) The importer number for the shipment;

(x) A copy of the bill of lading for the import;

(xi) The invoice for the import;

(xii) The quantity (in kilograms) of imports of used class II substances;

(xiii) The U.S. Customs entry form;

(iv) Dated records documenting the sale or transfer of class II substances for use in processes resulting in their transformation or destruction;

(xiv) Copies of transformation verifications or destruction verifications indicating that the class II substances will be transformed or destroyed (as provided in paragraph (e) of this section.

(3) Petition to Import Used Class II Controlled Substances and Transhipments—Importers. For each individual shipment (not to be aggregated) over 5 pounds of a used class II substance as defined in § 82.3, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition:

(i) The name and quantity (in kilograms) of the used class II substance to be imported;

(ii) The name and address of the importer, the importer ID number, the contact person, and the phone and fax numbers;

(iii) Name, address, contact person, phone number and fax number of all previous source equipment from which the used class II substance was recovered;

(iv) A detailed description of the previous use of the class II substance at each source facility and dated documents indicating the date the material was put into the equipment at each source facility (material must have remained in the equipment at least 24 months prior to recovery to be considered previously used);

(v) Name, address, contact person, phone number and fax number of the exporter and of all persons to whom the material was transferred or sold after it was recovered from the source facility;

(vi) The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical. If at the time of submitting a petition the importer does not know the U.S. port of entry, the expected date of shipment and the vessel transporting the chemical, and the importer receives a non-objection notice for the individual shipment in the petition, the importer is required to notify the Administrator of this information prior to the actual U.S. Customs entry of the individual shipment;

(vii) A description of the intended use of the used class II substance, and a copy of the contract for the purchase of the class II substance that includes the name, address, contact person, phone number and fax number of the purchaser;

(viii) The name, address, contact person, phone number and fax number of the U.S. reclamation facility, where applicable;

(ix) If someone at the source facility recovered the class II substance from the equipment, the name and phone and fax numbers of that person;

(x) If the imported class II substance was reclaimed in a foreign Party, the name, address, contact person, phone number and fax number of any or all foreign reclamation facility(ies) responsible for reclaiming the cited shipment;

(xi) An export license from the appropriate government agency in the country of export and, if recovered in another country, the export license from the appropriate government agency in that country;

(xii) If the imported used class II substance is intended to be sold as a refrigerant in the U.S., the name and address of the U.S. reclaimer who will bring the material to the standard required under Subpart F of this Part, if not already reclaimed to those specifications; and

(xiii) A certification of accuracy of the information submitted in the petition.

(4) Review of Petition to Import Used Class II Controlled Substances and Transhipments—Importers. Starting on the first working day following receipt by the Administrator of a petition to import a used class II substance, the Administrator will initiate a review of the information submitted under paragraph (c)(3) of this section and take action within 40 working days to issue either an objection-notice or a non-objection notice for the individual shipment to the person who submitted the petition to import the used class II substance.

(i) For the reasons listed below, the Administrator may issue an objection notice to a petition:

(A) If the Administrator determines that the information is insufficient, that is, if the petition lacks or appears to lack any of the information required under paragraph (c)(3) of this section;

(B) If the Administrator determines that any portion of the petition contains false or misleading information or has reason to believe that the petition contains false or misleading information;

(C) If the transaction appears to be contrary to provisions of the Vienna Convention on Substances that Deplete the Ozone Layer, the Montreal Protocol and Decisions by the Parties, or the non-compliance procedures outlined and instituted by the Implementation Committee of the Montreal Protocol;

(D) If the appropriate government agency in the exporting country has not agreed to issue an export license for the cited individual shipment of used class II substance;

(E) If the exporting country states that it is no longer allowing exports or if it reports that it has not granted any export licenses;

(F) If the Administrator has received information indicating that a person listed in the petition has produced at any time false information regarding trade in class II substances as defined in this subpart, including information required by EPA or required by the appropriate government agency in the exporting country;

(G) If the Administrator has received information indicating that a person listed in the petition is in violation of a requirement in any regulation under Title VI of the Clean Air Act;

(H) If reclamation capacity is installed or is being installed for that specific class II substance in the country of recovery or country of export and the capacity is funded in full or in part through the Multilateral Fund.

(ii) Within ten (10) working days after receipt of the objection notice, the importer may re-petition the Administrator, only if the Administrator indicated ''insufficient information'' as the basis for the objection notice. If no appeal is taken by the tenth working day after the date on the objection notice, the objection shall become final. Only one re-petition will be accepted for any original petition received by EPA.

(iii) Any information contained in the re-petition which is inconsistent with the original petition must be identified and a description of the reason for the inconsistency must accompany the re-petition.

(iv) In cases where the Administrator has no reason to object to the petition based on the criteria listed in paragraph (c)(4)(i) of this section, the Administrator will issue a non-objection notice.

(v) To pass the approved used class II substances through U.S. Customs, the petition and the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

(vi) If for some reason, following EPA's issuance of a non-objection notice, new information is brought to EPA's attention which shows that the non-objection notice was issued based on false information, then EPA has the right to:

(A) Revoke the non-objection notice;

(B) Pursue all means to ensure that the class II substance is not imported into the U.S.; and

(C) Take appropriate enforcement actions.

(vii) Once the Administrator issues a non-objection notice, the person receiving the non-objection notice is permitted to import the individual shipment of used class II substance only within the same control period as the date stamped on the non-objection notice.

(viii) A person receiving a non-objection notice from the Administrator for a petition to import used class II substances must maintain the following records:

(A) A copy of the petition;

(B) The EPA non-objection notice;

(C) The bill of lading for the import; and

(D) U.S. Customs entry documents for the import that must include one of the commodity codes from Appendix K to this subpart.

(5) Recordkeeping for Transhipments—Importers. Any person who transhipps a class II substance must maintain records that indicate:

(i) That the class II substance shipment originated in a foreign country;

(ii) That the class II substance shipment is destined for another foreign country; and

(iii) That the class II substance shipment will not enter interstate commerce within the U.S.

(d) *Exporters.* Persons (''exporters'') who export class II substances during a control period must comply with the following reporting requirements:

(1) Reporting—Exporters. For any exports of class II substances not reported under § 82.20 (additional consumption allowances), or under paragraph (b)(2) of this section (reporting for producers of class II substances), each exporter who exported a class II substance must submit to the Administrator the following information within 15 days after the end of each quarter in which the unreported exports left the U.S.:

(i) The names and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The type and quantity (in kilograms) of each class II substance exported and what percentage, if any of the class II substance is used;

(iv) The date on which, and the port from which, the class II substances were exported from the U.S. or its territories;

(v) The country to which the class II substances were exported;

(vi) The quantity (in kilograms) exported to each Article 5 country;

(vii) The commodity code for the class II substances shipped, which must be one of those listed in Appendix K to this subpart;

(viii) For persons reporting transformation or destruction, the invoice or sales agreement containing

language similar to the transformation verifications that the purchaser or recipient of imported class II substances intends to transform those substances, or destruction verifications showing that the purchaser or recipient intends to destroy the class II substances (as provided in paragraph (e) of this section).

(2) Reporting Export Production Allowances—Exporters. In addition to the information required in paragraph (d)(1) of this section, any exporter using export production allowances must also provide the following to the Administrator:

(i) The Employer Identification Number on the Shipper's Export Declaration Form or Employer Identification Number of the shipping agent shown on the U.S. Customs Form 7525;

(ii) The exporting vessel on which the class II substances were shipped; and

(iii) The quantity (in kilograms) exported to each Party.

(3) Reporting Article 5 Allowances—Exporters. In addition to the information required in paragraph (d)(1) of this section, any exporter using Article 5 allowances must also provide the following to the Administrator:

(i) The Employer Identification Number on the Shipper's Export Declaration Form or Employer Identification Number of the shipping agent shown on the U.S. Customs Form 7525; and

(ii) The exporting vessel on which the class II substances were shipped.

(4) Reporting Used Class II Controlled Substances—Exporters. Any exporter of used class II substances must indicate on the bill of lading or invoice that the class II substance is used, as defined in § 82.3.

(e) *Transformation and Destruction.* Any person who transforms or destroys class II substances must comply with the following recordkeeping and reporting requirements:

(1) Recordkeeping—Transformation and Destruction. Any person who transforms or destroys class II substances produced or imported by another person must maintain the following:

(i) Copies of the invoices or receipts documenting the sale or transfer of the class II substances to the person;

(ii) Records identifying the producer or importer of the class II substances received by the person;

(iii) Dated records of inventories of class II substances at each plant on the first day of each quarter;

(iv) Dated records of the quantity (in kilograms) of each class II substance transformed or destroyed;

(v) In the case where class II substances were purchased or transferred for transformation purposes, a copy of the person's transformation verification as provided under paragraph (e)(3)of this section.

(vi) Dated records of the names, commercial use, and quantities (in kilograms) of the resulting chemical(s) when the class II substances are transformed; and

(vii) Dated records of shipments to purchasers of the resulting chemical(s) when the class II substances are transformed.

(viii) In the case where class II substances were purchased or transferred for destruction purposes, a copy of the person's destruction verification, as provided under paragraph (e)(5) of this section.

(2) Reporting—Transformation and Destruction. Any person who transforms or destroys class II substances and who has submitted a transformation verification in paragraph (e)(3) of this section or a destruction verification in paragraph (e)(5) of this section to the producer or importer of the class II substances, must report the following:

(i) the names and quantities (in kilograms) of the class II substances transformed for each control period within 45 days of the end of such control period; and

(ii) the names and quantities (in kilograms) of the class II substances destroyed for each control period within 45 days of the end of such control period.

(3) Reporting—Transformation. Any person who purchases class II substances for purposes of transformation must provide the producer or importer with a verification that the class II substances are to be used in processes that result in their transformation.

(i) The transformation verification shall include the following:

(A) Identity and address of the person intending to transform the class II substances;

(B) The quantity (in kilograms) of class II substances intended for transformation;

(C) Identity of shipments by purchase order number(s), purchaser account number(s), by location(s), or other means of identification;

(D) Period of time over which the person intends to transform the class II substances; and

(E) Signature of the verifying person.

(ii) If any aspects of this verification change at any time, the person must submit a revised verification reflecting such changes to the producer from whom that person purchased class II substances intended for transformation.

(4) Reporting—Destruction. Any person who destroys class II substances shall provide EPA with a one-time report containing the following information:

(i) The destruction unit's destruction efficiency;

(ii) The methods used to record the volume destroyed;

(iii) The methods used to determine destruction efficiency;

(iv) The name of other relevant federal or state regulations that may apply to the destruction process;

(v) Any changes to the information in paragraphs (e)(4)(i), (ii), and (iii) of this section must be reflected in a revision to be submitted to EPA within 60 days of the change(s).

(5) Reporting—Destruction. Any person who purchases or receives and subsequently destroys class II substances that were originally produced without expending allowances shall provide the producer or importer from whom it purchased or received the class II substances with a verification that the class II substances will be used in processes that result in their destruction.

(i) The destruction verification shall include the following:

(A) Identity and address of the person intending to destroy class II substances;

(B) Indication of whether those class II substances will be completely destroyed, as defined in § 82.3, or less than completely destroyed, in which case the destruction efficiency at which such substances will be destroyed must be included;

(C) Period of time over which the person intends to destroy class II substances; and

(D) Signature of the verifying person.

(ii) If any aspects of this verification change at any time, the person must submit a revised verification reflecting such changes to the producer from whom that person purchased class II substances intended for destruction.

(f) *Heels—Recordkeeping and Reporting.* Any person who brings into the U.S. a container with a heel, as defined in § 82.3, of class II substances, must comply with the following requirements:

(1) Any person who brings a container with a heel must indicate on its bill of lading or invoice that the class II substance in the container is a heel.

(2) Any person who brings a container with a heel must report quarterly the quantity (in kilograms) brought into the U.S. and certify:

(i) That the residual quantity (in kilograms) in each shipment is no more

than 10 percent of the volume of the container;

(ii) That the residual quantity (in kilograms) in each shipment will either:

(A) Remain in the container and be included in a future shipment;

(B) Be recovered and transformed;

(C) Be recovered and destroyed; or

(D) Be recovered for a non-emissive use.

(3) Any person who brings a container with a heel into the U.S. must report on the final disposition of each shipment within 45 days of the end of the control period.

(g) Space vehicle/defense allowances—Reporting.

(1) Any person allocated space vehicle/defense allowances who submits an order to a producer or importer for a product made with or containing HCFC–141b must also submit quarterly reports to the Administrator containing the following information:

(i) The type of product made with or containing HCFC–141b;

(ii) The specific application of the product made with or containing HCFC–141b; and

(iii) The quantity (in kilograms) of HCFC–141b used or contained in the product received from the manufacturer; and

(iv) The identity of the manufacturer of the product made with or containing HCFC–141b.

(2) Any manufacturer of a product made with or containing HCFC–141b produced or imported as a result of space vehicle/defense allowances must submit quarterly reports to the Administrator containing the following information:

(i) The quantity (in kilograms) of HCFC–141b received;

(ii) The identity of the producer or importer supplying the HCFC–141b used or contained in the product;

(iii) The identity of the recipient of the product made with or containing HCFC–141b; and

(iv) The quantity (in kilograms) of HCFC–141b used or contained in the product sent to the recipient.

13. Revise Appendix B to Subpart A to read as follows:

APPENDIX B TO PART 82 SUBPART A—CLASS II CONTROLLED SUBSTANCES [a]

Dichlorofluoromethane (HCFC–21)	0.04
Monochlorodifluoromethane (HCFC–22)	0.055
Monochlorofluoromethane (HCFC–31)	0.02
Tetrachlorofluoroethane (HCFC–121)	0.01–0.04
Trichlorodifluoroethane (HCFC–122)	0.02–0.08
Dichlorotrifluoroethane (HCFC–123)	0.02
Monochlorotetrafluoroethane (HCFC–124)	0.022
Trichlorofluoroethane (HCFC–131)	0.007–0.05
Dichlorodifluoroethane (HCFC–132)	0.008–0.05
Monochlorotrifluoroethane (HCFC–133)	0.02–0.06
Dichlorofluoroethane (HCFC–141b)	0.11
Monochlorodifluoroethane (HCFC–142b)	0.065
Hexachlorofluoropropane (HCFC–221)	0.015–0.07
Pentachlorodifluoropropane (HCFC–222)	0.01–0.09
Tetrachlorotrifluoropropane (HCFC–223)	0.01–0.08
Trichlorotetrafluoropropane (HCFC–224)	0.01–0.09
Dichloropentafluoropropane (HCFC–225ca)	0.025
Dichloropentafluoropropane (HCFC–225cb)	0.033
Monochlorohexafluoropropane (HCFC–226)	0.02–0.10
Pentachlorofluoropropane (HCFC–231)	0.05–0.09
Tetrachlorodifluoropropane (HCFC–232)	0.008–0.10
Trichlorotrifluoropropane (HCFC–233)	0.007–0.23
Dichlorotetrafluoropropane (HCFC–234)	0.01–0.28
Monochloropentafluoropropane (HCFC–235)	0.03–0.52
Tetrachlorofluoropropane (HCFC–241)	0.004–0.09
Trichlorodifluoropropane (HCFC–242)	0.005–0.13
Dichlorotrifluoropropane (HCFC–243)	0.007–0.12
Monochlorotetrafluoropropane (HCFC–244)	0.009–0.14
Trichlorofluoropropane (HCFC–251)	0.001–0.01
Dichlorodifluoropropane (HCFC–252)	0.005–0.04
Monochlorotrifluoropropane (HCFC–253)	0.003–0.03
Dichlorofluoropropane (HCFC–261)	0.002–0.02
Monochlorodifluoropropane (HCFC–262)	0.002–0.02
Monochlorofluoropropane (HCFC–271)	0.001–0.03

[a] According to Annex C of the Protocol, ''Where a range of ODPs is indicated, the highest value in that range shall be used for the purposes of the Protocol. The ODPs listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the estimate of the ODP of the isomer with the highest ODP, and the lower value is the estimate of the ODP of the isomer with the lowest ODP.''

14. Appendix C to Subpart A is revised to read as follows:

Appendix C to Part 82 Subpart A—Parties to the Montreal Protocol (as of May 1, 2001)

Updated lists of Parties to the Protocol and the Amendments can be located at: *www.unep.org/ozone/ratif.htm.* A check mark indicates ratification/accession/acceptance/approval of the agreement.

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Albania	✔				
Algeria	✔	✔	✔		
Angola	✔				
Antigua and Barbuda	✔	✔	✔	✔	
Argentina	✔	✔	✔	✔	
Armenia	✔				
Australia	✔	✔	✔	✔	
Austria	✔	✔	✔	✔	
Azerbaijan	✔	✔	✔		
Bahamas	✔	✔	✔		
Bahrain	✔	✔	✔	✔	
Bangladesh	✔	✔	✔		
Barbados	✔	✔	✔		
Belarus	✔	✔			
Belgium	✔	✔	✔		
Belize	✔	✔	✔		
Benin	✔	✔	✔		
Bolivia	✔	✔	✔	✔	
Bosnia & Herzegovina	✔				
Botswana	✔	✔	✔		
Brazil	✔	✔	✔		
Brunei Darussalam	✔				
Bulgaria	✔	✔	✔	✔	
Burkina Faso	✔	✔	✔		
Burundi	✔				
Cameroon	✔	✔	✔		
Canada	✔	✔	✔	✔	✔
Central African Republic	✔				
Chad	✔				
Chile	✔	✔	✔	✔	✔
China	✔	✔			
Colombia	✔	✔	✔		
Comoros	✔	✔			
Congo	✔	✔			
Congo, Democratic Republic of.	✔	✔	✔		
Costa Rica	✔	✔	✔		
Cote d'Ivoire	✔	✔			
Croatia	✔	✔	✔	✔	
Cuba	✔	✔	✔		
Cyprus	✔	✔			
Czech Republic	✔	✔	✔	✔	
Denmark	✔	✔	✔		
Djibouti	✔	✔	✔	✔	
Dominica	✔	✔			
Dominican Republic	✔				
Ecuador	✔	✔	✔		
Egypt	✔	✔	✔	✔	
El Salvador	✔	✔	✔	✔	
Estonia	✔	✔	✔		
Ethiopia	✔				
European Community.	✔	✔	✔	✔	
Federated States of Micronesia	✔				
Fiji	✔	✔	✔		
Finland	✔	✔	✔		
France	✔	✔	✔		
Gabon	✔	✔	✔	✔	✔
Gambia	✔	✔			
Georgia	✔	✔	✔	✔	
Germany	✔	✔	✔	✔	
Ghana	✔	✔	✔		
Greece	✔	✔	✔		
Grenada	✔	✔	✔	✔	
Guatemala	✔				
Guinea	✔	✔			
Guyana	✔	✔	✔	✔	
Haiti	✔	✔	✔	✔	
Honduras	✔				

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Hungary	✔	✔	✔	✔	
Iceland	✔	✔	✔	✔	
India	✔	✔			
Indonesia	✔	✔	✔		
Iran, Islamic Republic of	✔	✔	✔		
Ireland	✔	✔	✔		
Israel	✔	✔	✔		
Italy	✔	✔	✔	✔	
Jamaica	✔	✔	✔		
Japan	✔	✔	✔		
Jordan	✔	✔	✔	✔	✔
Kazakhstan	✔				
Kenya	✔	✔	✔	✔	
Kiribati	✔				
Korea, Democratic People's Republic of	✔	✔	✔		
Korea, Republic of	✔	✔	✔	✔	
Kuwait	✔	✔	✔		
Kyrgyzstan	✔				
Lao, People's Democratic Republic	✔				
Latvia	✔	✔	✔		
Lebanon	✔	✔	✔	✔	
Lesotho	✔				
Liberia	✔	✔	✔		
Libyan Arab Jamahiriya	✔				
Liechtenstein	✔	✔	✔		
Lithuania	✔	✔	✔		
Luxembourg	✔	✔	✔	✔	✔
Madagascar	✔				
Malawi	✔	✔	✔		
Malaysia	✔	✔	✔		
Maldives	✔	✔			
Mali	✔	✔			
Malta	✔	✔			
Marshall Islands	✔	✔	✔		
Mauritania	✔				
Mauritius	✔	✔	✔		
Mexico	✔	✔	✔		
Moldova	✔				
Monaco	✔	✔	✔		
Mongolia	✔	✔	✔		
Morocco	✔	✔	✔		
Mozambique	✔	✔	✔		
Myanmar	✔	✔			
Namibia	✔	✔			
Nepal	✔	✔			
Netherlands	✔	✔	✔	✔	
New Zealand	✔	✔	✔	✔	
Nicaragua	✔	✔	✔		
Niger	✔	✔	✔	✔	
Nigeria	✔				
Norway	✔	✔	✔	✔	
Oman	✔	✔	✔		
Pakistan	✔	✔	✔		
Panama	✔	✔	✔	✔	
Papua New Guinea	✔	✔			
Paraguay	✔	✔	✔	✔	
Peru	✔	✔	✔		
Philippines	✔	✔			
Poland	✔	✔	✔	✔	
Portugal	✔	✔	✔		
Qatar	✔	✔	✔		
Romania	✔	✔	✔		
Russian Federation	✔	✔			
Saint Kitts & Nevis	✔	✔	✔	✔	
Saint Lucia	✔	✔	✔	✔	
Saint Vincent and the Grenadines	✔	✔	✔		
Samoa	✔				
Saudi Arabia	✔	✔	✔		
Senegal	✔	✔	✔	✔	
Seychelles	✔	✔	✔		
Singapore	✔	✔	✔	✔	
Slovakia	✔	✔	✔	✔	
Slovenia	✔	✔	✔	✔	

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Solomon Islands	✔	✔	✔	✔	
South Africa	✔	✔	✔		
Spain	✔	✔	✔	✔	
Sri Lanka	✔	✔	✔	✔	
Sudan	✔				
Suriname	✔				
Swaziland	✔				
Sweden	✔	✔	✔	✔	
Switzerland	✔	✔	✔		
Syrian Arab Republic	✔	✔	✔	✔	
Tajikistan	✔	✔			
Tanzania, United Republic of	✔	✔			
Thailand	✔	✔	✔		
The Former Yugoslav Republic of Macedonia	✔	✔	✔	✔	
Togo	✔	✔	✔		
Tonga	✔				
Trinidad and Tobago	✔	✔	✔	✔	
Tunisia	✔	✔	✔	✔	
Turkey	✔	✔	✔		
Turkmenistan	✔	✔			
Tuvalu	✔	✔	✔	✔	
Uganda	✔	✔	✔	✔	
Ukraine	✔	✔			
United Arab Emirates	✔				
United Kingdom	✔	✔	✔		
United States of America	✔	✔	✔		
Uruguay	✔	✔	✔	✔	
Uzbekistan	✔	✔	✔		
Vanuatu	✔	✔	✔		
Venezuela	✔	✔	✔		
Viet Nam	✔	✔	✔		
Yemen	✔	✔	✔	✔	
Yugoslavia	✔				
Zambia	✔	✔			
Zimbabwe	✔	✔	✔		

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Part III

Environmental Protection Agency

40 CFR Part 51

Proposed Guidelines for Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6934–4]

Proposed Guidelines for Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The purpose of this proposal is to request comment on EPA's proposed guidelines for implementation of the best available retrofit technology (BART) requirements under the regional haze rule which was published on July 1, 1999 (64 FR 35714). We propose to add the guidelines as appendix Y to 40 CFR part 51. We propose to add regulatory text requiring that these guidelines be used for addressing BART determinations under the regional haze rule. In addition, we are proposing one revision to guidelines issued in 1980 for facilities contributing to ''reasonably attributable'' visibility impairment.

DATES: We are requesting written comments by September 18, 2001. The EPA has scheduled two public hearings on this proposed rule. The first public hearing will be held on August 21 in Arlington, Virginia. The second public hearing will be held on August 27 in Chicago, Illinois. (See following section for times and addresses.)

ADDRESSES: *Docket.* Information related to the BART guidelines is available for inspection at the Air and Radiation Docket and Information Center, docket number A–2000–28. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

You should submit comments on today's proposal and the materials referenced herein (in duplicate if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–2000–28, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. You may also submit comments to EPA by electronic mail at the following address: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. All comments and data in electronic form must be identified by the docket number [A–2000–28]. Electronic comments on this proposed rule also may be filed online at many Federal Depository Libraries.

Public Hearings. The first public hearing on this proposed rule will be held on August 21 at 10:00 am at the Crowne Plaza Hotel, 1489 Jefferson Davis Highway, Arlington, VA 22202. The hotel is located near the Crystal City metro stop. The second public hearing will be held on August 27 at 10:00 am at the Metcalfe Federal Building, Room 331, 77 West Jackson Boulevard, Chicago, IL 60604.

If you wish to attend either public hearing or wish to present oral testimony, please send notification no later than one week prior to the date of the public hearing to Ms. Nancy Perry, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5628, e-mail *perry.nancy@epa.gov.*

Oral testimony will be limited to 5 minutes each. The hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written statement by the close of the comment period. Written statements (duplicate copies preferred) should be submitted to Docket No. A–2000–28 at the address listed above for submitting comments. The hearing schedule, including lists of speakers, will be posted on EPA's webpage at *http://www.epa.gov/air/visibility/whatsnew.html.* A verbatim transcript of the hearings and written statements will be made available for copying during normal working hours at the Air and Radiation Docket and Information Center at the address listed above.

FOR FURTHER INFORMATION CONTACT: Tim Smith (telephone 919–541–4718), Mail Drop 15, EPA, Air Quality Strategies and Standards Division, Research Triangle Park, North Carolina, 27711. Internet address: smith.tim@epa.gov.

SUPPLEMENTARY INFORMATION: We are providing the public with the opportunity to comment on EPA's Proposed BART Guidelines and the accompanying regulatory text.

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I. Background on BART Guidelines

A. Commitment in the Preamble to the Regional Haze Rule

The EPA included in the final regional haze rule a requirement for BART for certain large stationary sources put in place between 1962 and 1977. We discuss these requirements in detail in the preamble to the final rule (see 64 FR 35737–35743). The regulatory requirements for BART are codified in 40 CFR 51.308(e). In the preamble, we committed to issuing further guidelines to clarify the requirements of the BART provision. The purpose of this notice is to provide the public with an opportunity to comment on the draft guidelines and the accompanying regulatory text.

B. Statutory Requirement for BART Guidelines

Section 169A(b)(1) of the Clean Air Act (CAA) requires EPA to provide guidelines to States on the implementation of the visibility program. Moreover, the last sentence of section 169A(b) states:

> In the case of a fossil-fuel fired generating powerplant having a capacity in excess of 750 megawatts, the emission limitations required under this paragraph shall be determined pursuant to guidelines, promulgated by the Administrator under paragraph (1)

We interpret this statutory requirement as clearly requiring EPA to publish BART guidelines and to require that States follow the guidelines in establishing BART emission limitations for power plants with a total capacity exceeding the 750 megawatt cutoff. The

statute is less clear regarding whether the guidelines must be used for sources other than 750 megawatt power plants; however, today's proposed rule would require States to use the guidelines for all of the 26 categories. We believe it is reasonable that consistent, rigorous approaches be used for all BART source categories. In addition, we believe it is important to provide for consistent approaches to identifying the sources in the remaining categories which are BART-eligible. We request comment on whether the regional haze rule should: (1) Require use of the guidelines only for 750 megawatt utilities, with the guidelines applying as guidance for the remaining categories, or (2)require use of the guidelines for all of the affected source categories.

II. Proposed Amendments to Part 51

We propose:

(1) BART guidelines, to be added as appendix Y to 40 CFR part 51,

(2) regulatory text, to be added as sub-paragraph 51.308(e)(1)(C), requiring the use of the guidelines.

Overview of Proposed Appendix Y

We discuss the following general topics in appendix Y, which are organized into the following sections:

—*Introduction.* Section I provides an overview of the BART requirement in the regional haze rule and in the CAA, and an overview of the guidelines.

—*Identification of BART-eligible sources.* Section II is a step-by-step process for identifying BART-eligible sources.

—*Identification of sources subject to BART.* Sources ''subject to BART'' are those BART-eligible sources which ''emit a pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any Class I area.'' We discuss considerations for identifying sources subject to BART in section III of the proposed appendix Y.

—*Engineering analysis.* For each source subject to BART, the next step is to conduct an engineering analysis of emissions control alternatives. This step requires the identification of available, technically feasible, retrofit technologies, and for each technology identified, analysis of the cost of compliance, and the energy and non-air quality environmental impacts, taking into account the remaining useful life and existing control technology present at the source. For each source, a ''best system of continuous emission reduction'' is selected based upon this engineering analysis. Guidelines for the engineering analysis are described in section IV of the proposed appendix Y.

—*Cumulative air quality analysis.* The rule requires a cumulative analysis of the degree of visibility improvement that would be achieved in each Class I area as a result of the emissions reductions achievable from all sources subject to BART. The establishment of BART emission limits must take into account the cumulative impact overall from the emissions reductions from all of the source-specific ''best technologies'' identified in the engineering analysis. Considerations for this cumulative air quality analysis are discussed in section V.

—*Emission limits.* Considering the engineering analysis and the cumulative air quality analysis, States must establish enforceable limits, including a deadline for compliance, for each source subject to BART. Considerations related to these limits and deadlines are discussed in section VI.

—*Trading program alternative.* General guidance on how to develop an emissions trading program alternative to BART is contained in section VII of the guidance. (Note that more comprehensive guidance for emission trading programs generally is described in Section VII).

Regulatory Text

The proposed regulatory text would require that States follow the guidelines for all BART determinations required under the regional haze rule. We request public comment on all provisions of the guidelines and on the accompanying regulatory text.

III. Revision to 1980 BART Guidelines for ''Reasonably Attributable'' Visibility Impairment

As noted above, the primary purpose of today's proposed rule is to provide BART guidelines for the regional haze program. In addition, however, we are making limited revisions to longstanding guidelines for BART under the 1980 visibility regulations for localized visibility impairment that is ''reasonably attributable'' to one or a few sources.[1] The visibility regulations require that States must use a 1980 guidelines document when conducting BART analyses for certain power plants for reasonably attributable visibility impairment. The regulatory text for this requirement is found in 40 CFR 51.302(c)(4)(iii), as follows:

(iii) BART must be determined for fossil-fuel fired generating plants having a total generating capacity in excess of 750 megawatts pursuant to ''Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities'' (1980), which is incorporated by reference, exclusive of appendix E, which was published in the **Federal Register** on February 6, 1980 (45 FR 8210). It is EPA publication No. 450/3–80–009b and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. It is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol NW., suite 700, Washington, DC.

While the analytical process set forth in these guidelines is still generally acceptable for conducting BART analyses for ''reasonably attributable'' visibility impairment, there are statements in the 1980 BART Guidelines that could be read to indicate that the new source performance standards (NSPS) may be considered to represent the maximum achievable control for existing sources. While this may have been the case in 1980 (e.g., the NSPS for sulfur dioxide (SO_2) from boilers had been recently issued in June 1979), the maximum achievable control levels for recent plant retrofits have exceeded NSPS levels. Thus, in order to ensure that there is no confusion regarding how the 1980 guidelines should be interpreted, EPA has included the following discussion in today's action and proposes limited clarifying changes to the visibility regulations.

In various sections of the 1980 guideline, the discussion indicates that the NSPS in 1980 was considered to generally represent the most stringent option these sources could install as BART (i.e., maximum achievable level of control). See, e.g., 1980 BART Guidelines at pp. 8, 11 and 21. For example, a flowchart in the 1980 guidelines indicates that if States establish a BART emission limitation equivalent to NSPS for the source, then the State would not need to conduct a full-blown analysis of control alternatives. See, 1980 BART Guidelines at p. 8. Similarly, the visibility analysis described in the guideline assumes as a starting point the level of controls currently achieved by the NSPS. See, 1980 Guideline at p. 11. In the 20-year period since these guidelines were developed, there have been advances in SO_2 control technologies that have significantly increased the level of control that is feasible, while costs per ton of SO_2 controlled have declined.

[1] U.S. Environmental Protection Agency, *Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities,* EPA–450/3–80–009b, Office of Air Quality Planning and Standards, Research Triangle Park, N.C., November 1980 (1980 BART Guidelines).

This is demonstrated by a number of recent retrofits or binding agreements to retrofit coal-fired power plants in the western United States. These plants include: Hayden (CO), Navajo (AZ), Centralia (WA), and Mohave (NV). These cases have shown that control options exist which can achieve a significantly greater degree of control than the 70 percent minimum required by the NSPS for power plants emitting SO_2 at less than 0.60 lb/million Btu heat input. These retrofits have achieved, or are expected to achieve, annual SO_2 reductions in the 85 to 90 percent range. Additionally, an EPA report [2] published in October 2000 shows that the SO_2 removal for flue gas desulfurization systems installed in the 1990s is commonly 90 percent or more for both wet and dry scrubbers, well above the minimum 70 percent control required by the 1979 NSPS.[3]

Given the advances in control technology that have occurred over the past 20 years, we believe that it should be made clear that the BART analyses for reasonably attributable visibility impairment should not be based on an assumption that the NSPS level of control represents the maximum achievable level of control. While it is possible that a detailed analysis of the BART factors could result in the selection of a NSPS level of control, we believe that States should only reach this conclusion based upon an analysis of the full range of control options, including those more stringent than a NSPS level of control. In sum, all ''reasonably attributable'' BART analyses should consider control levels more stringent than NSPS, including maximum achievable levels, and evaluate them in light of the statutory factors.

IV. Administrative Requirements

In preparing any proposed rule, EPA must meet the administrative requirements contained in a number of statutes and executive orders. In this section of the preamble, we discuss how today's regulatory proposal for BART guidelines addresses these administrative requirements.

[2] U.S. Environmental Protection Agency, *Controlling SO_2 Emissions: A Review of Technologies,* EPA–600/R–00–093, Office of Research and Development, National Risk Management Research Laboratory, Research Triangle Park, NC, October 2000, pp 32–34.

[3] Note also that part II of the 1980 BART guidelines includes an analysis of 90 percent control for three power plants burning low-sulfur coal.

A. Regulatory Planning and Review by the Office of Management and Budget (OMB) (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The 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 impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' and EPA has submitted it to OMB for review. The drafts of rules submitted to OMB, the documents accompanying such drafts, written comments thereon, written responses by EPA, and identification of the changes made in response to OMB suggestions or recommendations are available for public inspection at EPA's Air and Radiation Docket and Information Center (Docket Number A–2000–28).

Because today's guidelines clarify, and do not change, the existing rule requirements of the regional haze rule, the guidelines do not have any effect on the Regulatory Impact Analysis (RIA) that was previously prepared for the regional haze rule. This RIA is available in the docket for the regional haze rule (A–95–38). As part of the analyses included in this RIA, we provided an estimate of the potential cost of control to BART sources that is an average of the costs associated with the least stringent illustrative progress goal (1.0 deciview reduction over a 15-year period) and the most stringent illustrative progress goal (10 percent deciview reduction over a 10-year period). The annual cost of control to BART sources associated with the final Regional Haze rulemaking in 2015, the year for which impacts are projected, is $72 million (1990 dollars).

This estimate of the control costs for BART sources for the year 2015 was calculated after taking into account a regulatory baseline projection for the year 2015. The baseline for these calculations included control measures estimated to be needed for partial attainment of the PM and ozone NAAQS issued in 1997. These baseline estimates were contained in an analysis prepared for the RIA for the PM and ozone NAAQS, and are summarized in the RIA for the regional haze rulemaking. As a result, in this RIA, we calculated relatively small impacts for BART, in part because the baseline for the analysis assumed a substantial degree of emissions control for BART-eligible sources in response to the national ambient air quality standards (NAAQS) for $PM_{2.5}$.

The EPA provided a benefits analysis of the emissions reductions associated with the four illustrative progress goals in the RIA for the final rulemaking. This benefits analysis is also incremental to partial attainment of the PM and ozone NAAQS issued in 1997. We did not, however, include a benefits analysis for the reductions from controls specific to the potentially affected BART sources. For more information on the benefit analysis for the final Regional Haze rulemaking, please refer to the RIA in the public docket for the regional haze rule (Docket A–95–38).

B. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. The EPA has also determined that this proposed rule would not have a significant impact on a substantial number of small entities because the rule would not establish requirements applicable to small entities.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. No.104–121) (SBREFA), provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available an initial regulatory flexibility analysis, unless it certifies that the proposed rule, if promulgated, will not have ''a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. See *Motor and Equip. Mfrs. Ass'n* v. *Nichols,* 142 F.3d 449 (D.C. Cir. 1998); *United Distribution Cos.* v. *FERC,* 88 F.3d 1105, 1170 (D.C.

Cir. 1996); *Mid-Tex Elec. Co-op, Inc.* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the rule).

Similar to the discussion in the proposed and final regional haze rules, the proposed BART guidelines would not establish requirements applicable to small entities. The proposed rule would apply to States, not to small entities. The BART requirements in the regional haze rule require BART determinations for a select list of major stationary sources defined by section 169A(g)(7) of the CAA. However, as noted in the proposed and final regional haze rules, the State's determination of BART for regional haze involves some State discretion in considering a number of factors set forth in section 169A(g)(2), including the costs of compliance. Further, the final regional haze rule allows States to adopt alternative measures in lieu of requiring the installation and operation of BART at these major stationary sources. As a result, the potential consequences of the BART provisions of the regional haze rule (as clarified in today's proposed guidelines) at specific sources are speculative. Any requirements for BART will be established by State rulemakings. The States would accordingly exercise substantial intervening discretion in implementing the BART requirements of the regional haze rule and today's proposed guidelines. In addition, we note that most sources potentially affected by the BART requirements in section 169A of the CAA are large industrial plants. Of these, we would expect few, if any, to be considered small entities. We request comment on issues regarding small entities that States might encounter when implementing the BART provision.

For today's proposed BART guidelines, EPA certifies that the guidelines and accompanying regulatory text would not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act—Impact on Reporting Requirements

The information collection requirements in today's proposal clarify, but do not modify, the information collection requirements for BART. Reporting requirements related to BART requirements were included in an Information Collection Request document that was prepared by EPA (ICR No. 1813.02) and a copy may be obtained from Sandy Farmer, by mail at Collection Strategies Division; U.S. EPA (2822) 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), 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, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658 (5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, 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.

By proposing to release BART guidelines and to require their use, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of the UMRA a small government agency plan.

Further, EPA carried out consultations with the governmental entities affected by this rule in a manner consistent with the intergovernmental consultation provisions of section 204 of the UMRA.

The EPA also believes that because today's proposal provides States with substantial flexibility, the proposed rule meets the UMRA requirement in section 205 to select the least costly and burdensome alternative in light of the statutory mandate for BART. The proposed rule provides States with the flexibility to establish BART based on certain criteria, one of which is the costs of compliance. The proposed rule also provides States with the flexibility to adopt alternatives, such as an emissions trading program, in lieu of requiring BART. The BART guidelines therefore, inherently provides for adoption of the least costly, most cost-effective, or least-burdensome alternative that achieves the objective of the rule.

The EPA is not reaching a final conclusion as to the applicability of the requirements of UMRA to this rulemaking action. It is questionable whether a requirement to submit a State Implementation Plan (SIP) revision

constitutes a Federal mandate. The obligation for a State to revise its SIP that arises out of sections 110(a), 169A and 169B of the CAA is not legally enforceable by a court of law and, at most, is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(A)(i) of UMRA (2 U.S.C. 658 (5)(A)(i)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(A)(i)(I) of UMRA (2 U.S.C. 658(5)(A)(i)(I)). As noted earlier, however, notwithstanding these issues, the discussion in section 2 and the analysis in chapter 8 of the RIA constitutes the UMRA statement that would be required by UMRA if its statutory provisions applied, and EPA has consulted with governmental entities as would be required by UMRA. Consequently, it is not necessary for EPA to reach a conclusion as to the applicability of the UMRA requirements.

E. Environmental Justice—Executive Order 12898

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The requirements of Executive Order 12898 have been previously addressed to the extent practicable in the RIA cited above, particularly in chapters 2 and 9 of the RIA.

F. Protection of Children From Environmental Health Risks and Safety Risks—Executive Order 13045

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The BART guidelines are not subject to Executive Order 13045 because they do not establish an environmental standard intended to mitigate health or safety risks.

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

The EPA concludes that this rule will not have substantial federalism implications, as specified in section 6 of Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not directly impose significant new requirements on State and local governments, nor substantially alter the relationship or the distribution of power and responsibilities between States and the Federal government.

Although EPA has determined that section 6 of Executive Order 13132 does not apply, EPA nonetheless consulted with a broad range of State and local officials during the course of developing this proposed rule. These included contacts with the National Governors Association, National League of Cities, National Conference of State Legislatures, U. S. Conference of Mayors, National Association of Counties, Council of State Governments, International City/County Management Association, and National Association of Towns and Townships.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. The EPA developed this proposed rule, however, during the period when EO 13084 was in effect; thus, EPA addressed tribal considerations under EO 13084. The EPA will analyze and fully comply with the requirements of EO 13175 before promulgating the final rule.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This proposed action does not involve or impose any requirements that directly affect Indian tribes. Under EPA's tribal authority rule, tribes are not required to implement CAA programs but, instead, have the opportunity to do so. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. No.

104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 13211. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' Under Executive Order 13211, a Statement of Energy Effects is a detailed statement by the agency responsible for the significant energy action relating to: (i) any adverse effects on energy supply, distribution, or use including a shortfall in supply, price increases, and increased use of foreign supplies) should the proposal be implemented, and (ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use. While this rulemaking is a ''significant regulatory action'' under Executive Order 12866, EPA has determined that this rulemaking is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

As discussed above in Unit IV.A, EPA provided an estimate of the potential cost of control to BART sources in the RIA for the regional haze rule for the year 2015. As specified in the CAA, these BART sources include certain utility steam electric plants and sources in 25 additional industrial source categories. In 1999, EPA estimated that BART would impose additional costs of $72 million per year (in 1990 dollars) in 2015 on affected utility and industrial sources.[4] It is expected that these annual costs will be lower in 2015 than currently projected due to continued improvements in scrubber operation and design. Included in the total cost is an estimate that roughly 35 utility units built between the years 1962 and 1977 would be required to install additional control equipment, typically scrubbers.

Consistent with the RIA, we have looked at the potential energy impacts associated with scrubbers. About 60 percent of the overall $72 million estimate, or about $40 million, was a result of scrubber cost calculations. These scrubber cost calculations are based on cost models which determine three types of costs for scrubbers: (1) Annualized capital costs, (2) fixed operation and maintenance costs, and (3) variable operating and maintenance costs. The cost models for variable operating and maintenance costs took into account the energy needs of the scrubber, which was assumed to be 2.0% of the electricity generated by a plant (or approximately 15,000 Megawatt-hours per year (MW–h/yr) for a 100 MW scrubber).[5] Although BART requirements may also be achieved with other control strategies and techniques (such as emission trading, or switching types of fuels used to produce power), these scrubber cost calculations can be used to provide an order of magnitude estimate of possible energy costs. The EPA estimates that of the total annual cost estimate of $40 million for scrubbers, about 20 to 35 percent, or about $9 million to $15 million, would be variable operating and maintenance costs. The energy costs for the scrubbers would be some fraction of this $9 to $15 million estimate, which also includes other elements such as the costs of reagents and disposal. Applying this energy use to the roughly 35 utility units requires a total of 525 million MW–h/yr, or 0.5 billion Kilowatt-hours/year (kWh–yr) of energy, which is valued at $17 million.[6]

The EPA also believes that an annual cost of $40 million for the electric utility sector for the year 2015 and beyond would not result in significant changes in electricity or fuel prices, or in significant changes in the consumption of energy.

For non-utility sources, the costs of the BART requirements may result from installing, operating and maintaining pollution control equipment or from other control strategies and techniques. As with utilities, a fraction of these costs in some cases would be related to the energy used to operate the pollution control equipment, thus increasing the overall demand for energy and fuels; however, such impacts are usually a small fraction of the overall annualized costs of control equipment. Thus, EPA believes that the energy costs for non-utility categories would be a relatively small fraction of the $72 million cost estimate. The EPA believes that the overall effects on energy supply and use for a small fraction of $72 million would be trivial, and that this would not significantly affect the price or supply of energy.

Therefore, we conclude that based on the analysis above that the BART requirements of the Regional Haze Rule will have a minimal impact, if any, on energy prices, or on the supply, distribution, or use of energy.

K. Guidelines for BART Determinations Under the Regional Haze Rule

We are proposing to adopt guidelines for BART determinations under the regional haze rule. The guidelines and areas on which comment is requested are described below. After we receive comments on these guidelines, we will add them to 40 CFR part 51 as appendix Y.

Guidelines for BART Determinations Under the Regional Haze Rule

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[4] *Regulatory Impact Analysis for the Regional Haze Rule.* U.S. EPA, Office of Air Quality Planning and Standards. April 22, 1999. Unit 6.6.3, pp. 6–40 through 6–42.

[5] U.S. Environmental Protection Agency, *Controlling SO2 Emissions: A Review of Technologies,* EPA–600/R–00–093, Office of Research and Development, National Risk Management Research Laboratory, Research Triangle Park, NC, October 2000, pp 32–34.

[6] Based on wholesale energy prices for the year 2000.

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I. Introduction and Overview

A. What Is the Purpose of the Guidelines?

The Clean Air Act (CAA), in sections 169A and 169B, contains requirements for the protection of visibility in 156 scenic areas across the United States. To meet the CAA's requirements, EPA recently published regulations to protect against a particular type of visibility impairment known as ''regional haze.'' The regional haze rule is found in this part (40 CFR part 51), in §§ 51.300 through 51.309. These regulations require, in § 51.308(e), that certain types of existing stationary sources of air pollutants install best available retrofit technology (BART). The guidelines are designed to help States and others (1) identify those sources that must comply with the BART requirement, and (2) determine the level of control technology that represents BART for each source.

B. What Does the CAA Require Generally for Improving Visibility?

Section 169A of the CAA, added to the CAA by the 1977 amendments, requires States to protect and improve visibility in certain scenic areas of national importance. The scenic areas protected by section 169A are called ''mandatory Class I Federal Areas.'' In these guidelines, we refer to these as ''Class I areas.'' There are 156 Class I areas, including 47 national parks (under the jurisdiction of the Department of Interior—National Park Service), 108 wilderness areas (under the jurisdiction of the Department of Interior–Fish and Wildlife Service or the Department of Agriculture—US Forest Service), and one International Park (under the jurisdiction of the Roosevelt-Campobello International Commission). The Federal Agency with jurisdiction over a particular Class I area is referred to in the CAA as the Federal Land Manager. A complete list of the Class I areas is contained in 40 CFR part 81, §§ 81.401 through 81.437, and you can find a map of the Class I areas at the following internet site: *http://www.epa.gov/ttn/oarpg/t1/fr—notices/classimp.gif*

The CAA establishes a national goal of eliminating man-made visibility impairment from the Class I areas where visibility is an important value. As part of the plan for achieving this goal, the visibility protection provisions in the CAA mandate that EPA issue regulations requiring that States adopt measures in their State Implementation Plans (SIPs), including long-term strategies, to provide for reasonable progress towards this national goal. The CAA also requires States to coordinate with the Federal Land Managers as they develop their strategies for addressing visibility.

C. What Is the BART Requirement in the CAA?

Under section 169A(b)(2)(A) of the CAA, States must require certain existing stationary sources to install BART. The BART requirement applies to ''major stationary sources'' from one of 26 identified source categories which have the potential to emit 250 tons per year or more of any air pollutant. The CAA requires only sources which were put in place during a specific 15-year time interval to install BART. The BART requirement applies to sources that existed as of the date of the 1977 CAA amendments (that is, August 7, 1977)

but which had not been in operation for more than 15 years (that is, not in operation as of August 7, 1962).

The CAA requires BART when any source meeting the above description ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in any Class I area. In identifying a level of control as BART, States are required by section 169A(g) of the CAA to consider:

—The costs of compliance,
—The energy and non-air quality environmental impacts of compliance,
—Any existing pollution control technology in use at the source,
—The remaining useful life of the source, and
—The degree of visibility improvement which may reasonably be anticipated from the use of BART.

The CAA further requires States to make BART emission limitations part of their SIPs. As with any SIP revision, this will be a public process that provides an opportunity for public comment and judicial review of any decision by EPA to approve or disapprove the revision.

D. What Types of Visibility Problems Does EPA Address in Its Regulations?

The EPA addressed the problem of visibility in two phases. In 1980, EPA published regulations addressing what we termed ''reasonably attributable'' visibility impairment. Reasonably attributable visibility impairment is the result of emissions from one or a few sources that are generally located in close proximity to a specific Class I area. The regulations addressing reasonably attributable visibility impairment are published in §§ 51.300 through 51.307.

On July 1, 1999, EPA amended these regulations to address the second, more common, type of visibility impairment known as ''regional haze.'' Regional haze is the result of the collective contribution of many sources over a broad region. The regional haze rule regulations slightly modified 40 CFR 51.300 through 51.307, including the addition of a few definitions in § 51.301, and added new §§ 51.308 and 51.309.

E. What Are the BART Requirements in EPA's Regional Haze Regulations?

In the July 1, 1999 rulemaking, EPA added a BART requirement for regional haze. You will find the BART requirements in 40 CFR 51.308(e)(1). Definitions of terms used in 40 CFR 51.308(e)(1) are found in § 51.301.

As we discuss in detail in these guidelines, the regional haze rule codifies and clarifies the BART provisions in the CAA. The rule requires that States identify and list ''BART-eligible sources,'' that is, that States identify and list those sources that fall within one of 26 source categories, that were put in place during the 15-year window of time from 1962 to 1977, and that have potential emissions greater than 250 tons per year. Once the State has identified the BART-eligible sources, the next step is to identify those BART eligible sources that may ''emit any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility.'' Under the rule, a source which fits this description is ''subject to BART.'' For each source subject to BART, States must identify the level of control representing BART based upon the following analyses:

— First, paragraph 308(e)(1)(ii)(A) provides that States must identify the best system of continuous emission control technology for each source subject to BART taking into account the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, and the remaining useful life of the source.
— Second, paragraph 308(e)(1)(ii)(B), provides that States must conduct an analysis of the degree of visibility improvement that would be achieved from all sources subject to BART that are within a geographic area that contributes to visibility impairment in any protected Class I area.

Once a State has identified the level of control representing BART (if any), it must establish an emission limit representing BART and must ensure compliance with that requirement no later than 5 years after EPA approves the SIP. States are allowed to establish design, equipment, work practice or other operational standards when limitations on measurement technologies make emission standards infeasible.

F. Do States Have an Alternative to Imposing Controls on Specific Facilities?

States are given the option under 40 CFR 51.308(e)(2) to adopt an alternative approach to imposing controls on a case-by-case basis for each source subject to BART. However, while States may instead adopt alternative measures, such as an emissions trading program, 40 CFR 51.308(e)(2)(i) requires States to provide a demonstration that any such alternative will achieve greater ''reasonable progress'' than would have resulted from installation of BART from all sources subject to BART. Such a demonstration must include:

— a list of all BART-eligible sources;
— an analysis of the best system of continuous emission control technology available for all sources subject to BART, taking into account the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, and the remaining useful life of the source. Unlike the analysis for BART under 40 CFR 51.308(e)(1), which requires that these factors be considered on a case-by-case basis, States may consider these factors on a category-wide basis, as appropriate, in evaluating alternatives to BART;
— an analysis of the degree of visibility improvement that would result from the alternative program in each protected Class I area.

States must make sure that a trading program or other such measure includes all BART-eligible sources, unless a source has installed BART, or plans to install BART consistent with 51.308(e)(1).[1] A trading program also may include additional sources. 40 CFR 51.308(e)(2) also requires that States include in their SIPs details on how they would implement the emission trading program or other alternative measure. States must provide a detailed description of the program including schedules for compliance, the emissions reductions that they will require, the administrative and technical procedures for implementing the program, rules for accounting and monitoring emissions, and procedures for enforcement.

G. What Is Included in the Guidelines?

In the guidelines, we provide procedures States must use in implementing the regional haze BART requirements on a source-by-source basis, as provided in 40 CFR 51.308(e)(1). We address general topics related to development of a trading program or other alternative allowed by 40 CFR 51.308(e)(2), but we will address most of the details of guidance for trading programs in separate guidelines.

The BART analysis process, and the contents of this guidance, are as follows:

[1] As noted in the preamble to the regional haze rule, States need not include a BART-eligible source in the trading program if the source already has installed BART-level pollution control technology and the emission limit is a federally enforceable requirement (64 FR 35742). We clarify in these guidelines that States may also elect to allow a source the option of installing BART-level controls within the 5-year period for compliance with the BART requirement [see section VI of these guidelines] rather than participating in a trading program.

–*Identification of all BART-eligible sources.* Section II of this guidance outlines a step-by-step process for identifying BART-eligible sources.

–*Identification of sources subject to BART.* As noted above, sources ''subject to BART'' are those BART-eligible sources which ''emit a pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any Class I area.'' We discuss considerations for identifying sources subject to BART in section III of the guidance.

–*Engineering analysis.* For each source subject to BART, the next step is to conduct an engineering analysis of emissions control alternatives. This step requires the identification of available, technically feasible, retrofit technologies, and for each technology identified, analysis of the cost of compliance, and the energy and non-air quality environmental impacts, taking into account the remaining useful life and existing control technology present at the source. For each source, a ''best system of continuous emission reduction'' will be selected based upon this engineering analysis. Guidelines for the engineering analysis are described in section IV of this guidance.

—*Cumulative air quality analysis.* The rule requires a cumulative analysis of the degree of visibility improvement that would be achieved in each Class I area as a result of the emissions reductions achievable from *all* sources subject to BART. The establishment of BART emission limits must take into account the cumulative impact overall from the emissions reductions from all of the source-specific ''best technologies'' identified in the engineering analysis. Considerations for this cumulative air quality analysis are discussed in section V of this guidance.

—*Emissions limits.* Considering the engineering analysis and the cumulative air quality analysis, States must establish enforceable limits, including a deadline for compliance, for each source subject to BART. Considerations related to these limits and deadlines are discussed in section VI of the guidance.

—*Considerations in establishing a trading program alternative.* General guidance on how to develop an emissions trading program alternative is contained in section VII of the guidance.

H. Who Is the Target Audience for the Guidelines?

The guidelines are written primarily for the benefit of State, local and tribal agencies to satisfy the requirements for including the BART determinations and emission limitations in their SIPs or tribal implementation plans (TIPs). Throughout the guidelines, which are written in a question and answer format, we ask questions ''How do I * * *?'' and answer with phrases ''you should * * *, you must* * *'' The ''you'' means a State, local or tribal agency conducting the analysis.[2] We recognize, however, that agencies may prefer to require source owners to assume part of the analytical burden, and that there will be differences in how the supporting information is collected and documented.

II. How To Identify BART-Eligible Sources

This section provides guidelines on how you identify BART-eligible sources. A BART-eligible source is an existing stationary source in 26 listed categories which meets criteria for startup dates and potential emissions.

A. What Are the Steps In Identifying BART-Eligible Sources?

Figure 1 shows the steps for identifying whether the source is a ''BART eligible source:''

Step 1: Identify the emission units in BART categories,

Step 2: Identify the start-up dates of those emission units, and

Step 3: Compare the potential emissions to the 250 ton/yr cutoff.

[2] In order to account for the possibility that BART-eligible sources could go unrecognized, we recommend that you adopt requirements placing a responsibility on source owners to self-identify if they meet the criteria for BART-eligible sources.

Figure 1. How to determine whether a source is BART-eligible:

Step 1: Identify emission units in the BART categories

Does the plant contain emissions units in one or more of the 26 source categories?
→ No → Stop
→ Yes → Proceed to Step 2

Step 2: Identify the start-up dates of these emission units

Do any of these emissions units meet the following two tests?

In existence on August 7, 1977
AND
Began operation after August 7, 1962

→ No → Stop
→ Yes → Proceed to Step 3

Step 3: Compare the potential emissions from these emission units to the 250 ton/yr cutoff

Identify the "stationary source" that includes the emission units you identified in Step 2.

Add the current potential emissions from all the emission units identified in Steps 1 and 2 that are included within the "stationary source" boundary.

Are the potential emissions from these units 250 tons per year or more for any visibility-impairing pollutant?

→ No → Stop

→ Yes → These emissions units comprise the "BART-eligible source."

1. Step 1: Identify Emission Units in the BART Categories

The BART requirement only applies to sources in specific categories listed in the CAA. The BART requirement does not apply to sources in other source categories, regardless of their emissions. The listed categories are:

(1) Fossil-fuel fired steam electric plants of more than 250 million British thermal units (BTU) per hour heat input,

(2) Coal cleaning plants (thermal dryers),

(3) Kraft pulp mills,

(4) Portland cement plants,

(5) Primary zinc smelters,

(6) Iron and steel mill plants,

(7) Primary aluminum ore reduction plants,

(8) Primary copper smelters,

(9) Municipal incinerators capable of charging more than 250 tons of refuse per day,

(10) Hydrofluoric, sulfuric, and nitric acid plants,

(11) Petroleum refineries,

(12) Lime plants,

(13) Phosphate rock processing plants,

(14) Coke oven batteries,

(15) Sulfur recovery plants,

(16) Carbon black plants (furnace process),

(17) Primary lead smelters,

(18) Fuel conversion plants,

(19) Sintering plants,

(20) Secondary metal production facilities,

(21) Chemical process plants,

(22) Fossil-fuel boilers of more than 250 million BTUs per hour heat input,

(23) Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels,

(24) Taconite ore processing facilities,

(25) Glass fiber processing plants, and

(26) Charcoal production facilities.

Some plant locations may have emission units from more than one category, and some emitting equipment may fit into more than one category. Examples of this situation are sulfur recovery plants at petroleum refineries, coke oven batteries and sintering plants at steel mills, and chemical process plants at refineries. For Step 1, you identify *all* of the emissions units at the plant that fit into one or more of the listed categories. You do not identify emission units in other categories.

Example: A mine is collocated with a electric steam generating unit and a coal cleaning plant. You would identify emission units associated with the electric steam generating unit and the coal cleaning plant, because they are listed categories but not the mine, because coal mining is not a listed category.

The category titles are generally clear in describing the types of equipment to be listed. Most of the category titles are very broad descriptions that encompass all emission units associated with a plant site (for example, ''petroleum refining'' and ''kraft pulp mills''). In addition, this same list of categories appears in the PSD regulations, for example in 40 CFR 52.21. States and source owners need not revisit any interpretations of the list made previously for purposes of the PSD program. We provide the following clarifications for a few of the category titles and we request comment on whether there are any additional source category titles for which EPA should provide clarification in the final guidelines:

—*''Steam electric plants of more than 250 million BTU/hr heat input.''* Because the category refers to ''plants,'' boiler capacities must be aggregated to determine whether the 250 million BTU/hr threshold is reached.

Example: Stationary source includes a steam electric plant with three 100 million BTU/hr boilers. Because the aggregate capacity exceeds 250 million BTU/hr for the ''plant,'' these boilers would be identified in Step 2.

''Steam electric plants'' includes combined cycle turbines because of their incorporation of heat recovery steam generators. Simple cycle turbines should not be considered ''steam electric plants'' because they typically do not make steam.

—*''Fossil-fuel boilers of more than 250 million BTU/hr heat input.''* The EPA proposes two options for interpreting this source category title. The first option is the approach used in the regulations for prevention of significant deterioration (PSD). In the PSD regulations, this same statutory language has been interpreted in regulatory language to mean ''fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input.'' The EPA proposes that this same interpretation be used for BART as well. Thus, as in the example above, you would aggregate boiler capacities to determine whether the 250 million BTU/hr threshold is reached.

Under the second option, this category would be interpreted to cover only those boilers that are individually greater than 250 million BTU/hr. This approach would result in differing language from the PSD program. It is possible, however, that different approaches may be justified. The PSD program ensures that new source projects do not circumvent the program by constructing several boilers with capacities lower than 250 million BTU/hr. Because the BART program affects only sources already in existence as of the date of the 1977 CAA amendments, there may be a lesser need to aggregate boilers that are individually less than 250 million BTU/hr. The EPA requests comment on both options proposed above.

—*Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels.* The 300,000 barrel cutoff refers to total facility-wide tank capacity for tanks that were put in place within the 1962–1977 time period, and includes gasoline and other petroleum-derived liquids.

—''*Phosphate rock processing plants.''* This category descriptor is broad, and includes all types of phosphate rock processing facilities, including elemental phosphorous plants as well as fertilizer production plants.

—''*Charcoal production facilities.''* In a letter sent to EPA on October 11, 2000, the National Association of Manufacturers (NAM) noted that there is some limited legislative history on this source category list. Specifically, there is discussion in the Congressional Record from July 29, 1976 (Cong. Record S. 12781–12784) which identifies a study in the 1970s by the Research Corporation of New England (the TRC report). The Congressional Record contains a table extracted from the TRC report that identifies 190 source categories considered in developing a list of 28 categories that led to the 26 categories eventually listed in the CAA. In its October 11, 2000 letter, NAM suggests that the Congressional Record and the TRC report are relevant to the interpretation of the source category ''charcoal production facilities.'' While EPA does not believe that the TRC report or table contain any information that would suggest subdividing this category, EPA has included the NAM letter and the cited passage from the Congressional Record in the docket for this proposed rule. The EPA requests comment on whether and how the information cited by NAM is relevant to the interpretation of this or other categories.

2. Step 2: Identify the Start-Up Dates of the Emission Units

Emissions units listed under Step 1 are BART-eligible only if they were ''in existence'' on August 7, 1977 but were not ''in operation'' before August 7, 1962.

What does ''in existence on August 7, 1977'' mean?

The regulation defines ''in existence'' to mean that:

> The owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (1) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed in a reasonable time. See 40 CFR 51.301.

Thus, the term ''in existence'' means the same thing as the term ''commence construction'' as that term is used in the PSD regulations. See 40 CFR 51.165(a)(1)(xvi) and 40 CFR 52.21(b)(9). Thus, an emissions unit could be ''in existence'' according to this test even if it did not begin operating until several years later.

Example: The owner or operator obtained necessary permits in early 1977 and entered into binding construction agreements in June 1977. Actual on-site construction began in late 1978, and construction was completed in mid-1979. The source began operating in September 1979. The emissions unit *was* ''in existence'' as of August 7, 1977.

We note that emissions units of this size for which construction commenced

AFTER August 7, 1977 (i.e., were not ''in existence'' on August 7, 1977) were subject to major new source review (NSR) under the PSD program. Thus, the August 7, 1977 ''in existence'' test is essentially the same thing as the identification of emissions units that were grandfathered from the NSR review requirements of the 1977 CAA amendments.

Finally, we note that sources are not BART eligible if the only change at the plant was the addition of pollution controls. For example, if the only change at a copper smelter during the 1962 through 1977 time period was the addition of acid plants for the reduction of SO_2 emissions, these emission controls would not by themselves trigger a BART review.

What does ''in operation before August 7, 1962'' mean?

An emissions unit that meets the August 7, 1977 ''in existence'' test is not BART-eligible if it was in operation before August 7, 1962. ''In operation'' is defined as ''engaged in activity related to the primary design function of the source.'' This means that a source must have begun actual operations by August 7, 1962 to satisfy this test.

Example: The owner or operator entered into binding agreements in 1960. Actual on-site construction began in 1961, and construction was complete in mid-1962. The source began operating in September 1962. The emissions unit *was not* ''in operation'' before August 7, 1962 and is therefore subject to BART.

What is a ''reconstructed source?''

Under a number of CAA programs, an existing source which is completely or substantially rebuilt is treated as a new source. Such ''reconstructed'' sources are treated as new sources as of the time of the reconstruction. Consistent with this overall approach to reconstructions, the definition of BART-eligible facility (reflected in detail in the definition of ''existing stationary facility'') includes consideration of sources that were in operation before August 7, 1962, but were reconstructed during the August 7, 1962 to August 7, 1977 time period.

Under the regulation, a reconstruction has taken place if ''the fixed capital cost of the new component exceeds 50 percent of the fixed capital cost of a comparable entirely new source.'' The rule also states that ''Any final decision as to whether reconstruction has occurred must be made in accordance with the provisions of §§ 60.15 (f)(1) through (3) of this title.'' [40 CFR 51.301]. ''§§ 60.15(f)(1) through (3)'' refers to the general provisions for New Source Performance Standards (NSPS). Thus, the same policies and procedures for identifying reconstructed ''affected facilities'' under the NSPS program must also be used to identify reconstructed ''stationary sources'' for purposes of the BART requirement.

You should identify reconstructions on an emissions unit basis, rather than on a plantwide basis. That is, you need to identify only the reconstructed emission units meeting the 50 percent cost criterion. You should include reconstructed emission units in the list of emission units you identified in Step 1.

The ''in operation'' and ''in existence'' tests apply to reconstructed sources. If an emissions unit was reconstructed and began actual operation before August 7, 1962, it is not BART-eligible. Similarly, any emissions unit for which a reconstruction ''commenced'' after August 7, 1977, is not BART-eligible.

How are modifications treated under the BART provision?

The NSPS program and the major source NSR program both contain the concept of modifications. In general, the term ''modification'' refers to any physical change or change in the method of operation of an emissions unit that leads to an increase in emissions.

The BART provision in the regional haze rule contains no explicit treatment of modifications. Accordingly, guidelines are needed on how modified emissions units, previously subject to best available control technology (BACT), lowest achievable emission rate (LAER) and/or NSPS, are treated under the rule. The EPA believes that the best interpretation for purposes of the visibility provisions is that modified emissions units are still ''existing.'' The BART requirements in the CAA do not appear to provide any exemption for sources which were modified since 1977. Accordingly, if an emissions unit began operation before 1962, it is not BART-eligible if it is modified at a later date, so long as the modification is not also a ''reconstruction.'' Similarly, an emissions unit which began operation within the 1962–1977 time window, but was modified after August 7, 1977, is BART-eligible. We note, however, that if such a modification was a major modification subject to the BACT, LAER, or NSPS levels of control, the review process will take into account that this level of control is already in place and may find that the level of controls are already consistent with BART. The EPA requests comment on this interpretation for ''modifications.'' [3]

[3] Another possible interpretation would be to consider sources built before 1962 but modified during the 1962–1977 time window as a ''new'' source at the time of the modification. Under this approach, such sources would be considered to have commenced operation during the 1962–1977 time period, and thus would be BART eligible. Similarly, consistent with this interpretation, a source modified after the 1977 date would be treated as ''new'' as of the date of the modification and therefore would not be BART-eligible. The EPA believes that this approach may be much more difficult to implement, given that programs to identify ''modifications'' were not in place for much of the 1962–1977 time period.

3. Step 3: Compare the potential emissions to the 250 ton/yr cutoff

The result of Steps 1 and 2 will be a list of emissions units at a given plant site, including reconstructed emissions units, that are within one or more of the BART categories and that were placed into operation within the 1962–1977 time window. The third step is to determine whether the total emissions represent a current potential to emit that is greater than 250 tons per year of any single visibility impairing pollutant. In most cases, you will add the potential emissions from all emission units on the list resulting from Steps 1 and 2. In a few cases, you may need to determine whether the plant contains more than one ''stationary source'' as the regional haze rule defines that term, and as we explain further below.

What pollutants should I address?

Visibility-impairing pollutants include the following:

—Sulfur dioxide (SO_2),
—Nitrogen oxides (NO_X),
—Particulate matter. (You may use PM_{10} as the indicator for particulate matter. We do not recommend use of total suspended particulates (TSP). PM_{10} emissions include the components of $PM_{2.5}$ as a subset. There is no need to have separate 250 ton thresholds for PM_{10} and $PM_{2.5}$, because 250 tons of PM_{10} represents at most 250 tons of $PM_{2.5}$, and at most 250 tons of any individual particulate species such as elemental carbon, crustal material, etc).
—Volatile organic compounds (VOC), and
—Ammonia.

What does the term ''potential'' emissions mean?

The regional haze rule defines potential to emit as follows:

''Potential to emit'' means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

This definition is identical to that in the PSD program (40 CFR 51.166 and 51.18). This means that a source which actually emits less than 250 tons per year of a visibility-impairing pollutant is BART-eligible if its emissions would exceed 250 tons per year when operating at its maximum physical and operational design.

Example: A source, while operating at one-fourth of its capacity, emits 75 tons per year of SO_2. If it were operating at 100 percent of its maximum capacity, the source would emit 300 tons per year. Because under the above definition such a source would have ''potential'' emissions that exceed 250 tons per year, the source (if in a listed category and built during the 1962–1977 time window) would be BART-eligible.

A source's ''potential to emit'' may take into account federally enforceable emission limits.

Example: The same source has a federally enforceable restriction limiting it to operating no more than ½ of the year. Because you can credit this under the definition of potential to emit, the source would have a potential of 150 tons per year, which is less than the 250 tons/year cutoff.

The definition of potential to emit allows only federally enforceable emission limits to be taken into account for this purpose, and does not credit emission limitations which are enforceable only by State and local agencies, but not by EPA and citizens in Federal court. As a result of some court cases in other CAA programs, EPA is undertaking a rulemaking to determine whether only federally enforceable limits should be taken into account. This rulemaking will address the Federal enforceability restriction in the regional haze definition as well as other program definitions. We expect that this rulemaking will be complete well before the time period for determining whether BART applies.

How do I identify whether a plant has more than one ''stationary source?''

The regional haze rule, in 40 CFR 51.301, defines a stationary source as a ''building, structure, facility or installation which emits or may emit any air pollutant.'' [4] The rule further defines ''building, structure or facility'' as:

All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities must be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972 as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0 respectively).

In applying this definition, it is first necessary to draw the plant boundary, that is the boundary for the ''contiguous or adjacent properties.'' Next, within this plant boundary it is necessary to group those emission units that are under ''common control.'' The EPA notes that these plant boundary issues and ''common control'' issues are very similar to those already addressed in implementation of the title V operating permits program and in NSR.

For emission units within the ''contiguous or adjacent'' boundary and under common control, you then group emission units that are within the same industrial grouping (that is, associated with the same 2-digit Standard Industrial Classification (SIC) code).[5] For most plants on the BART source category list, there will only be one 2-digit SIC that applies to the entire plant. For example, all emission units associated with kraft pulp mills are within SIC code 26, and chemical process plants will generally include emission units that are all within SIC code 28. You should apply this ''2-digit SIC test'' the same way you are now applying this test in the major source NSR programs.[6]

For purposes of the regional haze rule, you group emissions from all emission units put in place within the 1962–1977 time period that are within the 2-digit SIC code, even if those emission units are in different categories on the BART category list.

Examples: A chemical plant which started operations within the 1962 to 1977 time period manufactures hydrochloric acid (within the category title ''Hydrochloric, sulfuric, and nitric acid plants'') and various organic chemicals (within the category title ''chemical process plants''), and has onsite an industrial boiler greater than 250 million BTU/hour. All of the emission units are within SIC 28 and, therefore, all the emission units are considered in determining BART eligibility of the plant. You sum the emissions over all of these emission units to see whether there are more than 250 tons per year of potential emissions.

A steel mill which started operations within the 1962 to 1977 time period includes a sintering plant, a coke oven battery, and various other emission units. All of the emission units are within SIC 33. You sum the emissions over all of these emission units to see whether there are more than 250 tons per year of potential emissions.

4. Final Step: Identify the Emissions Units and Pollutants That Constitute the BART-Eligible Source

If the emissions from the list of emissions units at a stationary source exceed a potential to emit of 250 tons per year for any visibility-impairing pollutant, then that collection of emissions units is a BART-eligible source. A BART analysis is required for each visibility-impairing pollutant emitted.

Example: A stationary source comprises the following two emissions units, with the following potential emissions:

Emissions unit A
500 tons/yr SO_2
150 tons/yr NO_X
25 tons/yr PM
Emissions unit B
100 tons/yr SO_2
75 tons/yr NO_X
10 tons/yr PM

For this example, potential emissions of SO_2 are 600 tons per year, which exceeds the 250 tons/yr threshold. Accordingly, the entire ''stationary source'' that is emissions units A and B are subject to a BART review for SO_2, NO_X, and PM, even though the potential emissions of PM and NO_X each are less than 250 tons/yr.

Example: The total potential emissions, obtained by adding the potential emissions of all emission units in listed categories at a plant site, are as follows:

200 tons/yr SO_2
150 tons/yr NO_X
25 tons/yr PM

Even though total emissions exceed 250 tons per year, no individual regulated pollutant exceeds 250 tons per year and this source is not BART-eligible.

III. How To Identify Sources ''Subject To BART''

After you have identified the BART-eligible sources, the next step is determining whether these sources are subject to a further BART analysis because they emit ''an air pollutant which may reasonably be anticipated to cause or contribute'' to any visibility

[4] **Note:** Most of these terms and definitions are the same for regional haze and the 1980 visibility regulations. For the regional haze rule we use the term ''BART-eligible source'' rather than ''existing stationary facility'' to clarify that only a limited subset of existing stationary sources are subject to BART.

[5] The EPA recognizes that we are in transition period from the use of the SIC system to a new system called the North American industry Classification System (NAICS). Our initial thinking is that BART determinations, as a one-time activity, are perhaps best handled under the SIC classifications. We request comment on whether a switch to the new system for the regional haze rule is warranted—we expect that few if any BART eligibility determinations would hinge on this distinction.

[6] **Note:** The concept of support facility used for the PSD program applies here as well. As discussed in the draft *New Source Review Workbook Manual,* October 1990, pages A.3–A.5, support facilities, that is facilities that convey, store or otherwise assist in the production of the principal product, must be grouped with primary facilities even when more than one 2-digit SIC is present.

impairment in a Federal Class I area. As we discuss in the preamble to the regional haze rule at 64 FR 35739–35740, the statutory language represents a very low triggering threshold. In implementing the regional haze rule, you should find that a BART-eligible source is ''reasonably anticipated to cause or contribute'' to regional haze if the source emits pollutants within a geographic region from which pollutants can be emitted and transported downwind to a Class I area. Where emissions from a given geographic region contribute to regional haze in a Class I area, you should consider any emissions from BART-eligible sources in that region to contribute to the regional haze problem, thereby warranting a further BART analysis for those sources.

A. How Can I Identify ''the Geographic Area'' or ''Region'' That Contributes to a Given Class I Area?

As noted in the preamble to the regional haze rule, geographic ''regions'' that can contribute to regional haze generally extend for hundreds or thousands of kilometers (64 FR 35722). Accordingly, most BART-eligible sources are located within such a geographic region. For example, we believe it would be difficult to demonstrate that a State or territory's emissions do not contribute to regional haze impairment in a Class I area within that State or territory.

The regional haze rule recognizes that there may be geographic areas (individual States or multi-State areas) within the United States, (in virtually all cases involving States that do not have Class I areas) for which the total emissions make only a trivial contribution to visibility impairment in any Class I area. In identifying any such State or area, you or a regional planning organization must conduct an air quality modeling analysis to demonstrate that the total emissions from the State or area makes only a trivial contribution to visibility impairment in Class I areas.

One approach that can be used is to determine whether a State or area contributes in a non-trivial way would be to do an analysis where you compare the visibility impairment in a Class I area with the emissions from a State or area to the visibility impairment in the Class I area in the absence of the emissions from the State or area. This approach can be referred to as a ''zero-out'' approach where you zero out the emissions from the State or area that is suspected to make a trivial contribution to visibility impairment in a Class I area. Under this approach, you would compare:

(1) the visibility impairment in each affected Class I area (for the average of the 20 percent most impaired days and the 20 percent least impaired days) when the emissions from the State or area suspected to have a trivial contribution are included in the modeling analysis, and

(2) the visibility impairment in each affected Class I area (for the average of the 20 percent most impaired days and the 20 percent least impaired days), excluding from the modeling analysis the emissions from the geographic area suspected to have a trivial impact.

The difference in visibility between these two model runs provides an indication of the impact on visibility of emissions from the State(s) in question. In addition, it may be possible in the future to conduct analyses of the geographic area that contributes to visibility impairment in a Class I area through use of a source apportionment model for PM. Source apportionment models for PM are currently under development by private consultants. Guidance for regional modeling for visibility and PM is found in a document entitled ''Guidance for Demonstrating Attainment of Air Quality Goals for $PM_{2.5}$ and Regional Haze.'' [**Note:** this document is currently in draft form, but we expect a final document before final publication of the BART guidelines]

IV. Engineering Analysis of BART Options

This section describes the process for the engineering analysis of control options for sources subject to BART.

A. What Factors Must I Address in the Engineering Analysis?

The visibility regulations define BART as follows:

Best Available Retrofit Technology (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by * * * [a BART-eligible source]. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

In the regional haze rule, we divide the BART analysis into two parts: an engineering analysis requirement in 40 CFR 51.308(e)(1)(ii)(A), and a visibility impacts analysis requirement in 40 CFR 51.308(e)(1)(ii)(B). This section of the guidelines address the requirements for the engineering analysis. Your engineering analysis identifies the best system of continuous emission reduction taking into account:

—The available retrofit control options,
—Any pollution control equipment in use at the source (which affects the availability of options and their impacts),
—The costs of compliance with control options,
—The remaining useful life of the facility (which as we will discuss below, is an integral part of the cost analysis), and
—The energy and non-air quality environmental impacts of control options.

We discuss the requirement for a visibility impacts analysis below in section V.

B. How Does a BART Engineering Analysis Compare to a BACT Review Under the PSD Program?

In this proposal, we are seeking comment on two alternative approaches for conducting a BART engineering analysis. EPA prefers the first approach. Under this first alternative, the BART analysis would be very similar to the BACT review as described in the New Source Review Workshop Manual (Draft, October 1990). Consistent with the Workshop Manual, the BART engineering analysis would be a process which provides that all available control technologies be ranked in descending order of control effectiveness. Under this option, you must first examine the most stringent alternative. That alternative is selected as the ''best'' unless you demonstrate and document that the alternative cannot be justified based upon technical considerations, costs, energy impacts, and non-air quality environmental impacts. If you eliminate the most stringent technology in this fashion, you then consider the next most stringent alternative, and so on.

The EPA also requests comment on an alternative decision-making approach that would not necessarily begin with an evaluation of the most stringent control option. Under this approach, you would have more choices in the way you structure your BART analysis. For example, you could choose to begin the BART determination process by evaluating the least stringent technically feasible control option or an intermediate control option drawn from the range of technically feasible control alternatives. Under this approach, you would then consider the additional emission reductions, costs, and other

effects (if any) of successively more stringent control options. Under such an approach, you would still be required to (1) display and rank all of the options in order of control effectiveness, including the most stringent control option, and to identify the average and incremental costs of each option; (2) consider the energy and non-air quality environmental impacts of each option; and (3) provide a justification for adopting the control technology that you select as the ''best'' level of control, including an explanation as to why you rejected other more stringent control technologies. While both approaches require essentially the same parameters and analyses, the EPA prefers the first approach described above, because we believe it may be more straightforward to implement than the alternative and would tend to give more thorough consideration to stringent control alternatives.

Although very similar in process, BART reviews differ in several respects from the BACT review process described in the NSR Draft Manual. First, because all BART reviews apply to existing sources, the available controls and the impacts of those controls may differ. Second, the CAA requires you to take slightly different factors into account in determining BART and BACT. In a BACT analysis, the permitting authority must consider the ''energy, environmental and economic impacts and other costs'' associated with a control technology in making its determination. In a BART analysis, on the other hand, the State must take into account the ''cost of compliance, the remaining useful life of the source, the energy and nonair quality environmental impacts of compliance, any existing pollution control technology in use at the source, and the degree of improvement in visibility from the use of such technology'' in making its BART determination. Because of the differences in terminology, the BACT review process tends to encompass a broader range of factors. For example, the term ''environmental impacts'' in the BACT definition is more broad than the term ''nonair quality environmental impacts'' used in the BART definition. Accordingly, there is no requirement in the BART engineering analysis to evaluate adverse air quality impacts of control alternatives such as the relative impacts on hazardous air pollutants, although you may wish to do so. Finally, for the BART analysis, there is no minimum level of control required, while any BACT emission limitation must be at least as stringent as any NSPS that applies to the source.

C. Which Pollutants Must I Address in the Engineering Review?

Once you determine that a source is subject to BART, then a BART review is required for each visibility-impairing pollutant emitted. In a BART review, for each affected emission unit, you must establish BART for each pollutant that can impair visibility. Consequently, the BART determination must address air pollution control measures for each emissions unit or pollutant emitting activity subject to review.

Example: Plantwide emissions from emission units within the listed categories that began operation within the ''time window'' for BART [7] are 300 tons per year of NO_X, 200 tons per year of SO_2, and 150 tons of primary particulate. Emissions unit A emits 200 tons per year of NO_X, 100 tons per year of SO_2, and 100 tons per year of primary particulate. Other emission units, units B through H, which began operating in 1966, contribute lesser amounts of each pollutant. For this example, a BART review is required for NO_X, SO_2, and primary particulate, and control options must be analyzed for units B through H as well as unit A.

D. What Are the Five Basic Steps of a Case-by-Case BART Engineering Analysis?

The five steps are:

Step 1—Identify all [8] available retrofit control technologies,
Step 2—Eliminate Technically Infeasible Options,
Step 3—Rank Remaining Control Technologies By Control Effectiveness,
Step 4—Evaluate Impacts and Document the Results, and
Step 5—Select ''Best System of Continuous Emission Reduction.''

1. Step 1: How Do I Identify All Available Retrofit Emission Control Techniques?

Available retrofit control options are those air pollution control technologies with a practical potential for application to the emissions unit and the regulated pollutant under evaluation. Air pollution control technologies can include a wide variety of available methods, systems, and techniques for control of the affected pollutant. Available air pollution control technologies can include technologies employed outside of the United States that have been successfully demonstrated in practice on full scale operations, particularly those that have been demonstrated as retrofits to existing sources. Technologies required as BACT or LAER are available for BART purposes and must be included as control alternatives. The control alternatives should include not only existing controls for the source category in question, but also take into account technology transfer of controls that have been applied to similar source categories and gas streams. Technologies which have not yet been applied to (or permitted for) full scale operations need not be considered as available; we do not expect the source owner to purchase or construct a process or control device that has not already been demonstrated in practice.

Where a NSPS exists for a source category (which is the case for most of the categories affected by BART), you should include a level of control equivalent to the NSPS as one of the control options.[9] The NSPS standards are codified in 40 CFR part 60. We note that there are situations where NSPS standards do not require the most stringent level of available control for all sources within a category. For example, post-combustion NO_X controls (the most stringent controls for stationary gas turbines) are not required under subpart GG of the NSPS for Stationary Gas Turbines. However, such controls must still be considered available technologies for the BART selection process.

Potentially applicable retrofit control alternatives can be categorized in three ways.

- Pollution prevention: use of inherently lower-emitting processes/practices, including the use of materials and production processes and work practices that prevent emissions and result in lower ''production-specific'' emissions,
- Use of, (and where already in place, improvement in the performance of) add-on controls, such as scrubbers,

[7] That is, emission uunits that were in existence on August 7, 1977 and which began actual operation on or after August 7, 1962.

[8] In identifying ''all'' options, you must identify the most stringent option and a reasonable set of options for analysis that reflects a comprehensive list of available technologies. It is not necessary to list all permutations of available control levels that exist for a given technology—the list is complete if it includes the maximum level of control each technology is capable of achieving.

[9] In EPA's 1980 BART guidelines for reasonably attributable visibility impairment, we concluded that NSPS standards generally, at that time, represented the best level sources could install as BART, and we required no further demonstration if a NSPS level was selected. In the 20 year period since this guidance was developed, there have been advances in SO_2 control technologies, confirmed by a number of recent retrofits at Western power plants. Accordingly, EPA no longer concludes that the NSPS level of controls automatically represents ''the best these sources can install.'' While it is possible that a detailed analysis of the BART factors could result in the selection of a NSPS level of control, we believe that you should only reach this conclusion based upon an analysis of the full range of control options.

fabric filters, thermal oxidizers and other devices that control and reduce emissions after they are produced, and

• Combinations of inherently lower-emitting processes and add-on controls. Example: for a gas-fired turbine, a combination of combustion controls (an inherently lower-emitting process) and post-combustion controls such as selective catalytic reduction (add-on) may be available to reduce NO_X emissions.

For the engineering analysis, you should consider potentially applicable control techniques from all three categories. You should consider lower-polluting processes based on demonstrations from facilities manufacturing identical or similar products from identical or similar raw materials or fuels. Add-on controls, on the other hand, should be considered based on the physical and chemical characteristics of the pollutant-bearing emission stream. Thus, candidate add-on controls may have been applied to a broad range of emission unit types that are similar, insofar as emissions characteristics, to the emissions unit undergoing BART review.

In the course of the BART engineering analysis, one or more of the available control options may be eliminated from consideration because they are demonstrated to be technically infeasible or to have unacceptable energy, cost, or non-air quality environmental impacts on a case-by-case (or site-specific) basis. However, at the outset, you should initially identify all control options with potential application to the emissions unit under review.

We do not consider BART as a requirement to redesign the source when considering available control alternatives. For example, where the source subject to BART is a coal-fired electric generator, we do not require the BART analysis to consider building a natural gas-fired electric turbine although the turbine may be inherently less polluting on a per unit basis.

In some cases, retrofit design changes may be available for making a given production process or emissions unit inherently less polluting.[10] (Example: To allow for use of natural gas rather than oil for startup). In such cases, the ability of design considerations to make the process inherently less polluting must be considered as a control alternative for the source.

Combinations of inherently lower-polluting processes/practices (or a process made to be inherently less polluting) and add-on controls could possibly yield more effective means of emissions control than either approach alone. Therefore, the option to use an inherently lower-polluting process does not, in and of itself, mean that no additional add-on controls need to be included in the BART analysis. These combinations should be identified in Step 1 for evaluation in subsequent steps.

For emission units subject to a BART engineering review, there will often be control measures or devices already in place. For such emission units, it is important to include control options that involve improvements to existing controls, and not to limit the control options only to those measures that involve a complete replacement of control devices.

Example: For a power plant with an existing wet scrubber, the current control efficiency is 66 percent. Part of the reason for the relatively low control efficiency is that 22 percent of the gas stream bypasses the scrubber. An engineering review identifies options for improving the performance of the wet scrubber by redesigning the internal components of the scrubber and by eliminating or reducing the percentage of the gas stream that bypasses the scrubber. Four control options are identified: (1) 78 percent control based upon improved scrubber performance while maintaining the 22 percent bypass, (2) 83 percent control based upon improved scrubber performance while reducing the bypass to 15 percent, (3) 93 percent control based upon improving the scrubber performance while eliminating the bypass entirely, (this option results in a ''wet stack'' operation in which the gas leaving the stack is saturated with water) and (4) 93 percent as in option 3, with the addition of an indirect reheat system to reheat the stack gas above the saturation temperature. You must consider each of these four options in a BART analysis for this source.

You are expected to identify all demonstrated and potentially applicable retrofit control technology alternatives. Examples of general information sources to consider include:

• The EPA's Clean Air Technology Center, which includes the RACT/BACT/LAER Clearinghouse (RBLC);

• State and Local Best Available Control Technology Guidelines—many agencies have online information—for example South Coast Air Quality Management District, Bay Area Air Quality Management District, and Texas Natural Resources Conservation Commission;

• Control technology vendors;

• Federal/State/Local NSR permits and associated inspection/performance test reports;

• Environmental consultants;

• Technical journals, reports and newsletters, air pollution control seminars; and

• EPA's NSR bulletin board—http://www.epa.gov/ttn/nsr;

• Department of Energy's Clean Coal Program—technical reports;

• NO_X Control Technology ''Cost Tool''—Clean Air Markets Division web page—http://www.epa.gov/acidrain/nox/noxtech.htm;

• Performance of selective catalytic reduction on coal-fired steam generating units—final report. OAR/ARD, June 1997 (also available at http:www.epa.gov/acidrain/nox/noxtech.htm);

• Cost estimates for selected applications of NO_X control technologies on stationary combustion boilers. OAR/ARD June 1997. (Docket for NO_X SIP call, A–96–56, II–A–03);

• Investigation of performance and cost of NO_X controls as applied to group 2 boilers. OAR/ARD, August 1996. (Docket for Phase II NO_X rule, A–95–28, IV–A–4);

• Controlling SO_2 Emissions: A Review of Technologies. EPA–600/R–00–093, USEPA/ORD/NRMRL, October 2000.

• OAQPS Control Cost Manual.

You should compile appropriate information from all available information sources, and you should ensure that the resulting list of control alternatives is complete and comprehensive.

2. Step 2: How Do I Determine Whether the Options Identified in Step 1 Are Technically Feasible?

In Step two, you evaluate the technical feasibility of the control options you identified in Step one. You should clearly document a demonstration of technical infeasibility and should show, based on physical, chemical, and engineering principles, that technical difficulties would preclude the successful use of the control option on the emissions unit under review. You may then eliminate such technically infeasible control options from further consideration in the BART analysis.

In general, what do we mean by technical feasibility?

Control technologies are technically feasible if either (1) they have been installed and operated successfully for the type of source under review, or (2) the technology could be applied to the source under review. Two key concepts are important in determining whether a technology could be applied: ''availability'' and ''applicability.'' As explained in more detail below, a technology is considered ''available'' if

[10] Because BART applies to existing sources, we recognize that there will probably be far fewer opportunities to consider inherently lower-emitting processes than for NSR.

the source owner may obtain it through commercial channels, or it is otherwise available within the common sense meaning of the term. An available technology is ''applicable'' if it can reasonably be installed and operated on the source type under consideration. A technology that is available and applicable is technically feasible.

What do we mean by ''available'' technology?

The typical stages for bringing a control technology concept to reality as a commercial product are:

- Concept stage;
- Research and patenting;
- Bench scale or laboratory testing;
- Pilot scale testing;
- Licensing and commercial demonstration; and
- Commercial sales.

A control technique is considered available, within the context presented above, if it has reached the licensing and commercial sales stage of development. Similarly, we do not expect a source owner to conduct extended trials to learn how to apply a technology on a totally new and dissimilar source type. Consequently, you would not consider technologies in the pilot scale testing stages of development as ''available'' for purposes of BART review.

Commercial availability by itself, however, is not necessarily a sufficient basis for concluding a technology to be applicable and therefore technically feasible. Technical feasibility, as determined in Step 2, also means a control option may reasonably be deployed on or ''applicable'' to the source type under consideration.

Because a new technology may become available at various points in time during the BART analysis process, we believe that guidelines are needed on when a technology must be considered. For example, a technology may become available during the public comment period on the State's rule development process. Likewise, it is possible that new technologies may become available after the close of the State's public comment period and before submittal of the SIP to EPA, or during EPA's review process on the SIP submittal. In order to provide certainty in the process, we propose that all technologies be considered if available before the close of the State's public comment period. You need not consider technologies that become available after this date. As part of your analysis, you should consider any technologies brought to your attention in public comments. If you disagree with public comments asserting that the technology is available, you should provide an explanation for the public record as to the basis for your conclusion.

What do we mean by ''applicable'' technology?

You need to exercise technical judgment in determining whether a control alternative is applicable to the source type under consideration. In general, a commercially available control option will be presumed applicable if it has been or is soon to be deployed (e.g., is specified in a permit) on the same or a similar source type. Absent a showing of this type, you evaluate technical feasibility by examining the physical and chemical characteristics of the pollutant-bearing gas stream, and comparing them to the gas stream characteristics of the source types to which the technology had been applied previously. Deployment of the control technology on a new or existing source with similar gas stream characteristics is generally a sufficient basis for concluding the technology is technically feasible barring a demonstration to the contrary as described below.

What type of demonstration is required if I conclude that an option is not technically feasible?

Where you assert that a control option identified in Step 1 is technically infeasible, you should make a factual demonstration that the option is commercially unavailable, or that unusual circumstances preclude its application to a particular emission unit. Generally, such a demonstration involves an evaluation of the characteristics of the pollutant-bearing gas stream and the capabilities of the technology. Alternatively, a demonstration of technical infeasibility may involve a showing that there are unresolvable technical difficulties with applying the control to the source (e.g., size of the unit, location of the proposed site, or operating problems related to specific circumstances of the source). Where the resolution of technical difficulties is a matter of cost, you should consider the technology to be technically feasible. The cost of a control alternative is considered later in the process.

The determination of technical feasibility is sometimes influenced by recent air quality permits. In some cases, an air quality permit may require a certain level of control, but the level of control in a permit is not expected to be achieved in practice (e.g., a source has received a permit but the project was canceled, or every operating source at that permitted level has been physically unable to achieve compliance with the limit). Where this is the case, you should provide supporting documentation showing why such limits are not technically feasible, and, therefore, why the level of control (but not necessarily the technology) may be eliminated from further consideration. However, if there is a permit requiring the application of a certain technology or emission limit to be achieved for such technology (especially as a retrofit for an existing emission unit), this usually is sufficient justification for you to assume the technical feasibility of that technology or emission limit.

Physical modifications needed to resolve technical obstacles do not, in and of themselves, provide a justification for eliminating the control technique on the basis of technical infeasibility. However, you may consider the cost of such modifications in estimating costs. This, in turn, may form the basis for eliminating a control technology (see later discussion).

Vendor guarantees may provide an indication of commercial availability and the technical feasibility of a control technique and could contribute to a determination of technical feasibility or technical infeasibility, depending on circumstances. However, we do not consider a vendor guarantee alone to be sufficient justification that a control option will work. Conversely, lack of a vendor guarantee by itself does not present sufficient justification that a control option or an emissions limit is technically infeasible. Generally, you should make decisions about technical feasibility based on chemical, and engineering analyses (as discussed above), in conjunction with information about vendor guarantees.

A possible outcome of the BART procedures discussed in these guidelines is the evaluation of multiple control technology alternatives which result in essentially equivalent emissions. It is not EPA's intent to encourage evaluation of unnecessarily large numbers of control alternatives for every emissions unit. Consequently, you should use judgment in deciding on those alternatives for which you will conduct the detailed impacts analysis (Step 4 below). For example, if two or more control techniques result in control levels that are essentially identical, considering the uncertainties of emissions factors and other parameters pertinent to estimating performance, you may evaluate only the less costly of these options. You should narrow the scope of the BART analysis in this way, only if there is a negligible difference in emissions and energy and non-air quality environmental impacts between control alternatives.

3. Step 3: How Do I Develop a Ranking of the Technically Feasible Alternatives?

Step 3 involves ranking all the technically feasible control alternatives identified in Step 2. For the pollutant and emissions unit under review, you rank the control alternatives from the most to the least effective in terms of emission reduction potential.

Two key issues that must be addressed in this process include:

(1) Making sure that you express the degree of control using a metric that ensures an ''apples to apples'' comparison of emissions performance levels among options, and

(2) Giving appropriate treatment and consideration of control techniques that can operate over a wide range of emission performance levels.

In some instances, a control technology may reduce more than one visibility impairing pollutant. We request comment on whether and how the BART guidelines should address the process for ranking such control technologies against control technologies which reduce emissions of only one pollutant.

What are the appropriate metrics for comparison?

This issue is especially important when you compare inherently lower-polluting processes to one another or to add-on controls. In such cases, it is generally most effective to express emissions performance as an average steady state emissions level per unit of product produced or processed.

Examples of common metrics:

• Pounds of SO_2 emissions per million Btu heat input, and

• Pounds of NO_X emissions per ton of cement produced.

How do I evaluate control techniques with a wide range of emission performance levels?

Many control techniques, including both add-on controls and inherently lower polluting processes, can perform at a wide range of levels. Scrubbers and high and low efficiency electrostatic precipitators (ESPs) are two of the many examples of such control techniques that can perform at a wide range of levels. It is not our intent to require analysis of each possible level of efficiency for a control technique, as such an analysis would result in a large number of options. It is important, however, that in analyzing the technology you take into account the most stringent emission control level that the technology is capable of achieving. You should use the most recent regulatory decisions and performance data (e.g., manufacturer's data, engineering estimates and the experience of other sources) to identify an emissions performance level or levels to evaluate.

In assessing the capability of the control alternative, latitude exists to consider any special circumstances pertinent to the specific source under review, or regarding the prior application of the control alternative. However, you must document the basis for choosing the alternate level (or range) of control in the BART analysis. Without a showing of differences between the source and other sources that have achieved more stringent emissions limits, you should conclude that the level being achieved by those other sources is representative of the achievable level for the source being analyzed.

You may encounter cases where you may wish to evaluate other levels of control in addition to the most stringent level for a given device. While you must consider the most stringent level as one of the control options, you may consider less stringent levels of control as additional options. This would be useful, particularly in cases where the selection of additional options would have widely varying costs and other impacts.

Finally, we note that for retrofitting existing sources in addressing BART, you should consider ways to improve the performance of existing control devices, particularly when a control device is not achieving the level of control that other similar sources are achieving in practice with the same device.

How do I rank the control options?

After determining the emissions performance levels (using appropriate metrics of comparison) for each control technology option identified in Step 2, you establish a list that identifies the most stringent control technology option. Each other control option is then placed after this alternative in a ranking according to its respective emissions performance level, ranked from lowest emissions to highest emissions (most effective to least stringent effective emissions control alternative). You should do this for each pollutant and for each emissions unit (or grouping of similar units) subject to a BART analysis.

4. Step 4: For a BART Engineering Analysis, What Impacts Must I Calculate and Report? What Methods Does EPA Recommend for the Impacts Analysis?

After you identify and rank the available and technically feasible control technology options, you must then conduct three types of impacts analyses when you make a BART determination:

Impact analysis part 1: Costs of compliance, (taking into account the remaining useful life of the facility)

Impact analysis part 2: Energy impacts, and

Impact analysis part 3: Non-air quality environmental impacts.

In this section, we describe how to conduct each of these three analyses. You are responsible for presenting an evaluation of each impact along with appropriate supporting information. You should discuss and, where possible, quantify both beneficial and adverse impacts. In general, the analysis should focus on the direct impact of the control alternative.

a. *Impact analysis part 1: How do I estimate the costs of control?* To conduct a cost analysis, you:

—Identify the emissions units being controlled,

—Identify design parameters for emission controls, and

—Develop cost estimates based upon those design parameters.

It is important to identify clearly the emission units being controlled, that is, to specify a well-defined area or process segment within the plant. In some cases, multiple emission units can be controlled jointly. However, in other cases it may be appropriate in the cost analysis to consider whether multiple units will be required to install separate and/or different control devices. The engineering analysis should provide a clear summary list of equipment and the associated control costs. Inadequate documentation of the equipment whose emissions are being controlled is a potential cause for confusion in comparison of costs of the same controls applied to similar sources.

You then specify the control system design parameters. Potential sources of these design parameters include equipment vendors, background information documents used to support NSPS development, control technique guidelines documents, cost manuals developed by EPA, control data in trade publications, and engineering and performance test data. The following are a few examples of design parameters for two example control measures:

Control device	Examples of design parameters
Wet Scrubbers	Type of sorbent used (lime, limestone, etc.) Gas pressure drop Liquid/gas ratio.

Control device	Examples of design parameters
Selective Catalytic Reduction.	Ammonia to NO_x molar ratio Pressure drop Catalyst life.

The value selected for the design parameter should ensure that the control option will achieve the level of emission control being evaluated. You should include in your analysis, documentation of your assumptions regarding design parameters. Examples of supporting references would include the Office of Air Quality Planning and Standards (OAQPS) *Control Cost Manual* (see below) and background information documents used for NSPS and hazardous pollutant emission standards. If the design parameters you specified differ from typical designs, you should document the difference by supplying performance test data for the control technology in question applied to the same source or a similar source.

Once the control technology alternatives and achievable emissions performance levels have been identified, you then develop estimates of capital and annual costs. The basis for equipment cost estimates also should be documented, either with data supplied by an equipment vendor (i.e., budget estimates or bids) or by a referenced source (such as the *OAQPS Control Cost Manual,* Fifth Edition, February 1996, EPA 453/B–96–001).[11] In order to maintain and improve consistency, we recommend that you estimate control equipment costs based on the EPA/OAQPS *Control Cost Manual,* where possible.[12] The *Control Cost Manual* addresses most control technologies in sufficient detail for a BART analysis. While the types of site-specific analyses contained in the *Control Cost Manual* are less precise than those based upon a detailed engineering design, normally the estimates provide results that are plus or minus 30 percent, which is generally sufficient for the BART review. The cost analysis should take into account site-specific conditions that are out of the ordinary (e.g., use of a more expensive fuel or additional waste disposal costs) that may affect the cost of a particular BART technology option.

b. *How do I take into account a project's ''remaining useful life'' in calculating control costs?* You treat the requirement to consider the source's ''remaining useful life'' of the source for BART determinations as one element of the overall cost analysis. The ''remaining useful life'' of a source, if it represents a relatively short time period, may affect the annualized costs of retrofit controls. For example, the methods for calculating annualized costs in EPA's *Control Cost Manual* require the use of a specified time period for amortization that varies based upon the type of control. If the remaining useful life will clearly exceed this time period, the remaining useful life has essentially no effect on control costs and on the BART determination process. Where the remaining useful life is less than the time period for amortizing costs, you should use this shorter time period in your cost calculations.

For purposes of these guidelines, the remaining useful life is the difference between:

(1) January 1 of the year you are conducting the BART analysis (but not later than January 1, 2008);[13] and

(2) The date the facility stops operations. This date must be assured by a federally-enforceable restriction preventing further operation. A projected closure date, without such a federally-enforceable restriction, is not sufficient. (The EPA recognizes that there may be situations where a source operator intends to shut down a source by a given date, but wishes to retain the flexibility to continue operating beyond that date in the event, for example, that market conditions change.) We request comment on how such flexibility could be provided in this regard while maintaining consistency with the statutory requirement to install BART within 5 years. For example, one option that we request comment on is allowing a source to choose between:

(1) Accepting a federally enforceable condition requiring the source to shut down by a given date, or

(2) Installing the level of controls that would have been considered BART if the BART analysis had not assumed a reduced remaining useful life if the source is in operation 5 years after the date EPA approves the relevant SIP. The source would not be allowed to operate after the 5-year mark without such controls.

c. *What do we mean by cost effectiveness?* Cost effectiveness, in general, is a criterion used to assess the potential for achieving an objective at least cost. For purposes of air pollutant analysis, ''effectiveness'' is measured in terms of tons of pollutant emissions removed, and ''cost'' is measured in terms of annualized control costs. We recommend two types of cost-effectiveness calculations—average cost effectiveness, and incremental cost-effectiveness.

In the cost analysis, you should take care to not focus on incomplete results or partial calculations. For example, large capital costs for a control option alone would not preclude selection of a control measure if large emissions reductions are projected. In such a case, low or reasonable cost effectiveness numbers may validate the option as an appropriate BART alternative irrespective of the large capital costs. Similarly, projects with relatively low capital costs may not be cost effective if there are few emissions reduced.

d. *How do I calculate average cost effectiveness?* Average cost effectiveness means the total annualized costs of control divided by annual emissions reductions (the difference between baseline annual emissions and the estimate of emissions after controls), using the following formula:

$$\text{Average cost effectiveness (dollars per ton removed)} = \frac{\text{Control option annualized cost}^{14}}{\text{Baseline annual emissions} - \text{Annual emissions with Control option}}$$

[11] The *Control Cost Manual* is updated periodically. While this citation refers to the latest version at the time this guidance was written, you should use the version that is current as of when you conduct your impact analysis. This document is available at the following Web site: *http://www.epa.gov/ttn/catc/dir1/chpt2acr.pdf.*

[12] You should include documentation for any additional information you used for the cost calculations, including any information supplied by vendors that affects your assumptions regarding purchased equipment costs, equipment life, replacement of major components, and any other element of the calculation that differs from the *Control Cost Manual.*

[13] The reason for the year 2008 is that the year 2008 is the latest year for which SIPs are due to address the BART requirement.

[14] Whenever you calculate or report annual costs, you should indicate the year for which the costs are estimated. For example, if you use the year 2000 as the basis for cost comparisons, you would report that an annualized cost of $20 million would be: $20 million (year 2000 dollars).

Because you calculate costs in (annualized) dollars per year ($/yr) and because you calculate emissions rates in tons per year (tons/yr), the result is an average cost-effectiveness number in (annualized) dollars per ton ($/ton) of pollutant removed.

e. *How do I calculate baseline emissions?* The baseline emissions rate should represent a realistic depiction of anticipated annual emissions for the source. In general, for the existing sources subject to BART, you will estimate the anticipated annual emissions based upon actual emissions from a baseline period. For purposes of estimating actual emissions, these guidelines take a similar approach to the current definition of actual emissions in NSR programs. That is, the baseline emissions are the average annual emissions from the two most recent years, unless you demonstrate that another period is more representative of normal source operations.[15]

When you project that future operating parameters (e.g., limited hours of operation or capacity utilization, type of fuel, raw materials or product mix or type) will differ from past practice, and if this projection has a deciding effect in the BART determination, then you must make these parameters or assumptions into enforceable limitations. In the absence of enforceable limitations, you calculate baseline emissions based upon continuation of past practice.

Examples: The baseline emissions calculation for an emergency standby generator may consider the fact that the source owner would not operate more than past practice of 2 weeks a year. On the other hand, baseline emissions associated with a base-loaded turbine should be based on its past practice which would indicate a large number of hours of operation. This produces a significantly higher level of baseline emissions than in the case of the emergency/standby unit and results in more cost-effective controls. As a consequence of the dissimilar baseline emissions, BART for the two cases could be very different.

[15] This is the approach in the current NSR regulations. It is possible that this definition of baseline period may change based upon a current effort to amend the NSR regulations. We propose that these guidelines should be amended to be consistent with the approach taken in that separate rulemaking.

f. *How do I calculate incremental cost effectiveness?* In addition to the average cost effectiveness of a control option, you should also calculate incremental cost effectiveness. You should consider the incremental cost effectiveness in combination with the total cost effectiveness in order to justify elimination of a control option. The incremental cost effectiveness calculation compares the costs and emissions performance level of a control option to those of the next most stringent option, as shown in the following formula:

Incremental Cost Effectiveness (dollars per incremental ton removed) =
(Total annualized costs of control option) − (Total annualized costs of next control option) ÷
(Next control option annual emissions) − (Control option annual emissions)

Example 1: Assume that Option F on Figure 2 has total annualized costs of $1 million to reduce 2000 tons of a pollutant, and that Option D on Figure 2 has total annualized costs of $500,000 to reduce 1000 tons of the same pollutant. The incremental cost effectiveness of Option F relative to Option D is ($1 million − $500,000) divided by (2000 tons − 1000 tons), or $500,000 divided by 1000 tons, which is $500/ton.

Example 2: Assume that two control options exist: Option 1 and Option 2. Option 1 achieves a 100,000 ton/yr reduction at an annual cost of $19 million. Option 2 achieves a 98,000 tons/yr reduction at an annual cost of $15 million. The incremental cost effectiveness of Option 1 relative to Option 2 is ($19 million − $15 million) divided by (100,000 tons − 98,000 tons). The adoption of Option 1 instead of Option 2 results in an incremental emission reduction of 2,000 tons per year at an additional cost of $4,000,000 per year. The incremental cost of Option 1, then, is $2000 per ton − 10 times the average cost of $190 per ton. While $2000 per ton may still be deemed reasonable, it is useful to consider both the average and incremental cost in making an overall cost-effectiveness finding. Of course, there may be other differences between these options, such as, energy or water use, or non-air environmental effects, which also deserve consideration in selecting a BART technology.

You should exercise care in deriving incremental costs of candidate control options. Incremental cost-effectiveness comparisons should focus on annualized cost and emission reduction differences between ''dominant'' alternatives. To identify dominant alternatives, you generate a graphical plot of total annualized costs for total emissions reductions for all control alternatives identified in the BART analysis, and by identifying a ''least-cost envelope'' as shown in Figure 2.

Example: Eight technically feasible control options for analysis are listed in the BART ranking. These are represented as A through H in Figure 2. The dominant set of control options, B, D, F, G, and H, represent the least-cost envelope, as we depict by the cost curve connecting them. Points A, C and E are inferior options, and you should not use them in calculating incremental cost effectiveness. Points A, C and E represent inferior controls because B will buy more emissions reductions for less money than A; and similarly, D and F will buy more reductions for less money than C and E, respectively.

In calculating incremental costs, you:

(1) Rank the control options in ascending order of annualized total costs,

(2) Develop a graph of the most reasonable smooth curve of the control options, as shown in Figure 2, and

(3) Calculate the incremental cost effectiveness for each dominant option, which is the difference in total annual costs between that option and the next most stringent option, divided by the difference in emissions reductions between those two options. For example, using Figure 2, you would calculate incremental cost effectiveness for the difference between options B and D, options D and F, options F and G, and options G and H.

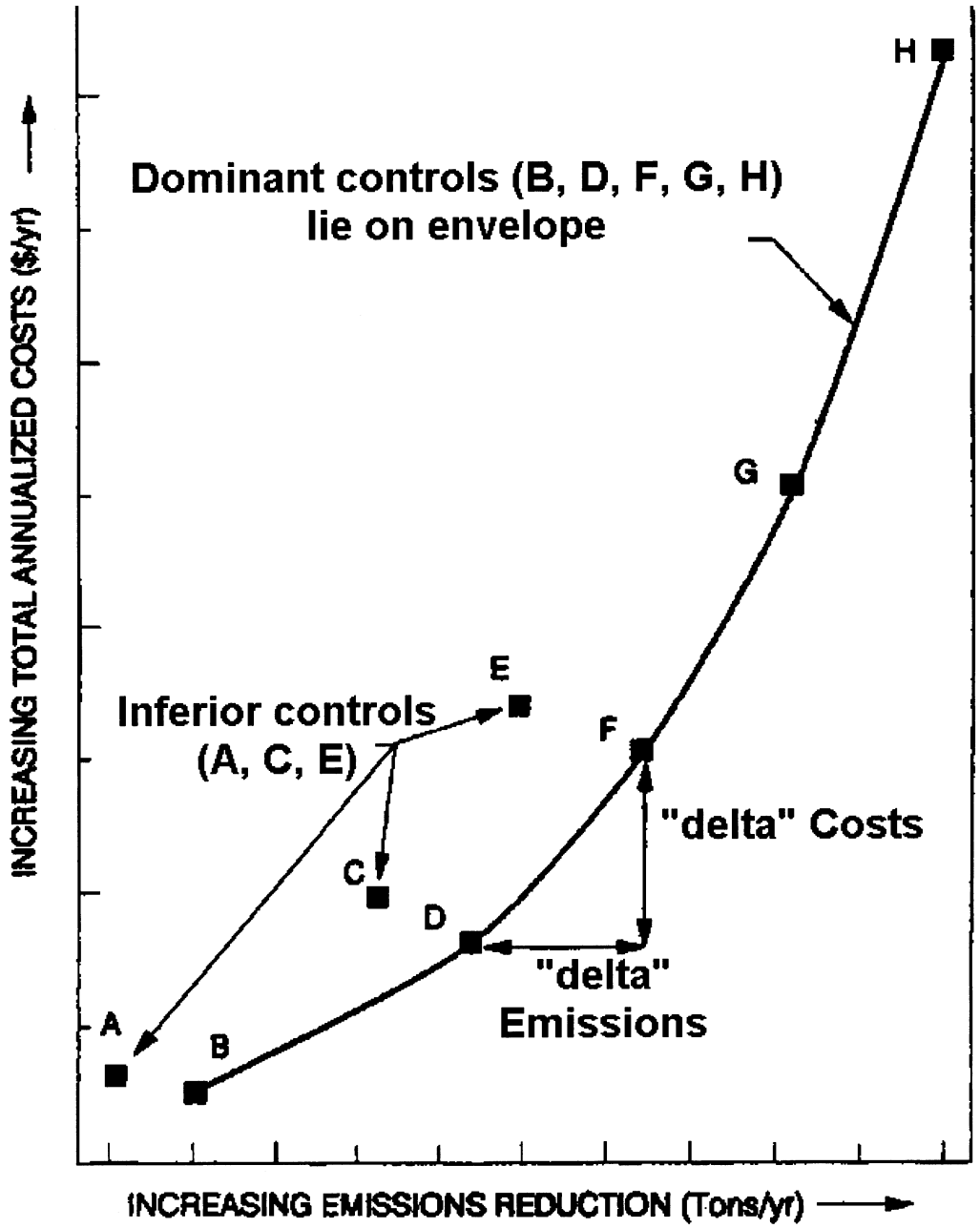

Figure 2. Least-cost Envelope.

A comparison of incremental costs can also be useful in evaluating the viability of a specific control option over a range of efficiencies. For example, depending on the capital and operational cost of a control device, total and incremental cost may vary significantly (either increasing or decreasing) over the operational range of a control device.

In addition, when you evaluate the average or incremental cost effectiveness of a control alternative, you should make reasonable and supportable assumptions regarding control efficiencies. An unrealistically low assessment of the emission reduction potential of a certain technology could result in inflated cost-effectiveness figures.

g. *What other information should I provide in the cost impacts analysis?* You should provide documentation of any unusual circumstances that exist for the source that would lead to cost-effectiveness estimates that would exceed that for recent retrofits. This is especially important in cases where recent retrofits have cost-effectiveness values that are within a reasonable range, but your analysis concludes that costs for the source being analyzed are not reasonable.

Example: In an arid region, large amounts of water are needed for a scrubbing system. Acquiring water from a distant location could greatly increase the cost effectiveness of wet scrubbing as a control option.

h. *Impact analysis part 2: How should I analyze and report energy impacts?* You should examine the energy requirements of the control technology and determine whether the use of that technology results in any significant or unusual energy penalties or benefits. A source owner may, for example, benefit from the combustion of a concentrated gas stream rich in volatile organic compounds; on the other hand, more often extra fuel or electricity is required to power a control device or incinerate a dilute gas stream. If such benefits or penalties exist, they should be quantified and included in the cost analysis. Because energy penalties or benefits can usually be quantified in terms of additional cost or income to the source, the energy impacts analysis can, in most cases, simply be factored into the cost impacts analysis. However, certain types of control technologies have inherent energy penalties associated with their use. While you should quantify these penalties, so long as they are within the normal range for the technology in question, you should not, in general, consider such penalties to be an adequate justification for eliminating that technology from consideration.

Your energy impact analysis should consider only direct energy consumption and not indirect energy impacts. For example, you could estimate the direct energy impacts of the control alternative in units of energy consumption at the source (e.g., BTU, kWh, barrels of oil, tons of coal). The energy requirements of the control options should be shown in terms of total (and in certain cases, also incremental) energy costs per ton of pollutant removed. You can then convert these units into dollar costs and, where appropriate, factor these costs into the control cost analysis.

You generally do not consider indirect energy impacts (such as energy to produce raw materials for construction of control equipment). However, if you determine, either independently or based on a showing by the source owner, that the indirect energy impact is unusual or significant and that the impact can be well quantified, you may consider the indirect impact.

The energy impact analysis may also address concerns over the use of locally scarce fuels. The designation of a scarce fuel may vary from region to region. However, in general, a scarce fuel is one which is in short supply locally and can be better used for alternative purposes, or one which may not be reasonably available to the source either at the present time or in the near future.

Finally, the energy impacts analysis may consider whether there are relative differences between alternatives regarding the use of locally or regionally available coal, and whether a given alternative would result in significant economic disruption or unemployment. For example, where two options are equally cost effective and achieve equivalent or similar emissions reductions, one option may be preferred if the other alternative results in significant disruption or unemployment.

i. *Impact analysis part 3: How do I analyze ''non-air quality environmental impacts?''* In the non-air quality related environmental impacts portion of the BART analysis, you address environmental impacts other than air quality due to emissions of the pollutant in question. Such environmental impacts include solid or hazardous waste generation and discharges of polluted water from a control device.

You should identify any significant or unusual environmental impacts associated with a control alternative that have the potential to affect the selection or elimination of a control alternative. Some control technologies may have potentially significant secondary environmental impacts. Scrubber effluent, for example, may affect water quality and land use. Alternatively, water availability may affect the feasibility and costs of wet scrubbers. Other examples of secondary environmental impacts could include hazardous waste discharges, such as spent catalysts or contaminated carbon. Generally, these types of environmental concerns become important when sensitive site-specific receptors exist or when the incremental emissions reductions potential of the most stringent control is only marginally greater than the next most-effective option. However, the fact that a control device creates liquid and solid waste that must be disposed of does not necessarily argue against selection of that technology as BART, particularly if the control device has been applied to similar facilities elsewhere and the solid or liquid waste problem under review is similar to those other applications. On the other hand, where you or the source owner can show that unusual circumstances at the proposed facility create greater problems than experienced elsewhere, this may provide a basis for the elimination of that control alternative as BART.

The procedure for conducting an analysis of non-air quality environmental impacts should be made based on a consideration of site-specific circumstances. It is not necessary to perform this analysis of environmental impacts for the entire list of technologies you ranked in Step 3, if you propose to adopt the most stringent alternative. In that case, the analysis need only address those control alternatives with any significant or unusual environmental impacts that have the potential to affect the selection or elimination of a control alternative. Thus, any important relative environmental impacts (both positive and negative) of alternatives can be compared with each other.

In general, the analysis of impacts starts with the identification and quantification of the solid, liquid, and gaseous discharges from the control device or devices under review. Initially, you should perform a qualitative or semi-quantitative screening to narrow the analysis to discharges with potential for causing adverse environmental effects. Next, you should assess the mass and composition of any such discharges and quantify them to the extent possible, based on readily-available information. You should also assemble pertinent information about the public or environmental consequences of releasing these materials.

j. *What are examples of non-air quality environmental impacts?* The following are examples of how to conduct non-air quality environmental impacts:

- *Water Impact*

You should identify the relative quantities of water used and water pollutants produced and discharged as a result of the use of each alternative emission control system relative to the most stringent alternative. Where possible, you should assess the effect on ground water and such local surface water quality parameters as ph, turbidity, dissolved oxygen, salinity, toxic chemical levels, temperature, and any other important considerations. The analysis should consider whether applicable water quality standards will be met and the availability and effectiveness of various techniques to reduce potential adverse effects.

- *Solid Waste Disposal Impact*

You should compare the quality and quantity of solid waste (e.g., sludges, solids) that must be stored and disposed of or recycled as a result of the application of each alternative emission control system with the quality and quantity of wastes created with the most stringent emission control system. You should consider the composition and various other characteristics of the solid waste (such as permeability, water retention, rewatering of dried material,

compression strength, leachability of dissolved ions, bulk density, ability to support vegetation growth and hazardous characteristics) which are significant with regard to potential surface water pollution or transport into and contamination of subsurface waters or aquifers.

• *Irreversible or Irretrievable Commitment of Resources*

You may consider the extent to which the alternative emission control systems may involve a trade-off between short-term environmental gains at the expense of long-term environmental losses and the extent to which the alternative systems may result in irreversible or irretrievable commitment of resources (for example, use of scarce water resources).

• *Other Adverse Environmental Impacts*

You may consider significant differences in noise levels, radiant heat, or dissipated static electrical energy. Other examples of non-air quality environmental impacts would include hazardous waste discharges such as spent catalysts or contaminated carbon. Generally, these types of environmental concerns become important when the plant is located in an area that is sensitive to environmental degradation and when the incremental emissions reductions potential of the most stringent control option is only marginally greater than the next most-effective option.

• *Benefits to the Environment*

It is important to consider relative differences between options regarding their *beneficial impacts* to non-air quality-related environmental media. For example, you may consider whether a given control option results in less deposition of pollutants to nearby sensitive water bodies.

5. Step 5: How Do I Select the ''Best'' Alternative, Using the Results of Steps 1 Through 4?

a. *Summary of the Impacts Analysis.* From the alternatives you ranked in Step 3, you should develop a chart (or charts) displaying for each of the ranked alternatives:

• Expected emission rate (tons per year, pounds per hour);

• Emissions performance level (e.g., percent pollutant removed, emissions per unit product, lb/MMbtu, ppm);

• Expected emissions reductions (tons per year);

• Costs of compliance—total annualized costs ($), cost effectiveness ($/ton), and incremental cost effectiveness ($/ton);

• Energy impacts (indicate any significant energy benefits or disadvantages);

• Non-air quality environmental impacts (includes any significant or unusual other media impacts, e.g., water or solid waste), both positive and negative.

b. *Selecting a ''best'' alternative.* As discussed above, we are seeking comment on two alternative approaches for evaluating control options for BART. The first involves a sequential process for conducting the impacts analysis that begins with a complete evaluation of the most stringent control option. Under this approach, you determine that the most stringent alternative in the ranking does not impose unreasonable costs of compliance, taking into account both average and incremental costs, then the analysis begins with a presumption that this level is selected. You then proceed to considering whether energy and non-air quality environmental impacts would justify selection of an alternative control option. If there are no outstanding issues regarding energy and non-air quality environmental impacts, the analysis is ended and the most stringent alternative is identified as the ''best system of continuous emission reduction.''

If you determine that the most stringent alternative is unacceptable due to such impacts, you need to document the rationale for this finding for the public record. Then, the next most-effective alternative in the listing becomes the new control candidate and is similarly evaluated. This process continues until you identify a technology which does not pose unacceptable costs of compliance, energy and/or non-air quality environmental impacts.

The EPA also requests comment on an alternative decision-making approach that would not begin with an evaluation of the most stringent control option. For example, you could choose to begin the BART determination process by evaluating the least stringent, technically feasible control option or by evaluating an intermediate control option drawn from the range of technically feasible control alternatives. Under this approach, you would then consider the additional emissions reductions, costs, and other effects (if any) of successively more stringent control options. Under such an approach, you would still be required to (1) display and rank all of the options in order of control effectiveness and to identify the average and incremental costs of each option; (2) consider the energy and non-air quality environmental impacts of each option; and (3) provide a justification for adopting the technology that you select as the ''best'' level of control, including an explanation as to why you rejected other more stringent control technologies.

Because of EPA's experience in evaluating SO_2 control options for utility boilers, the Agency is proposing to establish a presumption regarding the level of SO_2 control that is generally achievable for such sources. Based on the cost models in the *Controlling SO_2 Emissions* report,[16] it appears that, where there is no existing control technology in place, 90–95 percent control can generally be achieved at cost-effectiveness values that are in the hundreds of dollars per ton range or less.[17] We are thus proposing a presumption that, for uncontrolled utility boilers, an SO_2-control level in the 90–95 range is generally achievable. If you wish to demonstrate a BART level of control that is less than any presumption established the final guidelines, you would need to demonstrate the source-specific circumstances with respect to costs, remaining useful life, non-air quality environmental impacts, or energy impacts that would justify less stringent controls than for a typical utility boiler. We believe that the ''consideration of cost'' factor for source-by-source BART, which is a technology-based approach, generally requires selection of control measures that are within this level of cost effectiveness. We recognize, however, that the population of utility boilers subject to BART may have case-by-case variations (for example, type of fuel used, severe space limitations, and presence of existing control equipment) that could affect the costs of applying retrofit controls. We invite comments on whether the 90–95 percent presumption is appropriate, or whether another presumption should be established instead. If commenters want to offer a different presumption they should provide documentation supporting the basis for their proposal.

For evaluating the significance of the costs of compliance, EPA requests

[16] Documentation of the presumption that 90–95 percent control is achievable is contained in a recent report entitled *Controlling SO_2 Emissions: A Review of Technologies,* EPA–600/R–00–093, available on the internet at *http://www.epa.gov/ORD/WebPubs/so2*. This report summarizes percentage controls for flue gas desulfurization (FGD) systems worldwide, provides detailed methods for evaluating costs, and explains the reasons why costs have been decreasing with time.

[17] The EPA has used the cost models in the *Controlling SO_2 Emissions* report to calculate cost-effectiveness ($/ton) estimates for FGD technologies for a number of example cases. (See note to docket A–2000–28 from Tim Smith, EPA/OAQPS, December 29, 2000).

comment on whether the final rule should contain specific criteria, and on whether such criteria would improve implementation of the BART requirement. For example, in the work of the Western Regional Air Partnership (WRAP),[18] a system is described which views as ''low cost'' those controls with an average cost effectiveness below $500/ton, as ''moderate'' those controls with an average cost effectiveness between $500 to 3000 per ton, and as ''high'' those controls with an average cost effectiveness greater than $3000 per ton.

c. *In selecting a ''best'' alternative, should I consider the affordability of controls?* Even if the control technology is cost effective, there may be cases where the installation of controls would affect the viability of continued plant operations.

As a general matter, for plants that are essentially uncontrolled at present, and emit at much greater levels per unit of production than other plants in the category, we are unlikely to accept as BART any analysis that preserves a source's uncontrolled status. While this result may predict the shutdown of some facilities, we believe that the flexibility provided in the regional haze rule for an alternative reduction approach, such as an emissions trading program, will minimize the likelihood of shutdowns.

Nonetheless, we recognize there may be unusual circumstances that justify taking into consideration the conditions of the plant and the economic effects of requiring the use of a given control technology. These effects would include effects on product prices, the market share, and profitability of the source. We do not intend, for example, that the most stringent alternative must always be selected, if that level would cause a plant to shut down, while a slightly lesser degree of control would not have this effect. Where there are such unusual circumstances that are judged to have a severe effect on plant operations, you may take into consideration the conditions of the plant and the economic effects of requiring the use of a control technology. Where these effects are judged to have a severe impact on plant operations you may consider them in the selection process, so long as you provide an economic analysis that demonstrates, in sufficient detail for a meaningful public review, the specific economic effects, parameters, and reasoning. (We recognize that this review process must preserve the confidentiality of sensitive business information). Any analysis should consider whether other competing plants in the same industry may also be required to install BART controls.

V. Cumulative Air Quality Analysis

A. What Air Quality Analysis Do We Require in the Regional Haze Rule for Purposes of BART Determinations?

In the regional haze rule, we require the following in 40 CFR 51.308(e)(1)(ii)(B):

> An analysis of the degree of visibility improvement that would be achieved in each mandatory Class I Federal area as a result of the emission reductions from all sources subject to BART located within the region that contributes to visibility impairment in the Class I area, based on the * * * [results of the engineering analysis required by 40 CFR 51.308(e)(1)(ii)(A)] * * *

This means that the regional haze rule requires you to conduct a regional modeling analysis which addresses the total cumulative regional visibility improvement if all sources subject to BART were to install the ''best'' controls selected according to the engineering analysis described above in section IV of these guidelines. We are developing guidelines for regional air quality modeling.[19]

B. How Do I Consider the Results of This Analysis in My Selection of BART for Individual Sources?

You use a regional modeling analysis to assess the *cumulative* impact on visibility of the controls selected in the engineering analysis for the time period for the first regional haze SIP, that is, the time period between the baseline period and the year 2018. You use this cumulative impact assessment to make a determination of whether the controls you identified, in their entirety, provide a sufficient visibility improvement to justify their installation. We believe that there is a sufficient basis for the controls if you can demonstrate for any Class I area that any of the following criteria are met:

(1) The cumulative visibility improvement is a substantial fraction of the achievable visibility improvement from all measures included in the SIP, or is a substantial fraction of the visibility goal selected for any Class I area (EPA believes that for such situations, the controls would be essential to ensure progress towards a long-term improvement in visibility); OR

(2) The cumulative visibility improvement is necessary to prevent any degradation from current conditions on the best visibility days.

Note that under 40 CFR 51.308(e)(1)(ii)(B), the passage cited above, the rule does not provide for modeling of subgroupings of the BART population within a region, nor for determinations that some, but not all, of the controls selected in the engineering analysis may be included in the SIP. Thus, to comply with 40 CFR 51.308(e)(1), the visibility SIP must provide for BART emission limitations for *all* sources subject to BART (or demonstrate that BART-level controls are already in place and required by the SIP), unless you provide a demonstration that *no* BART controls are justifiable based upon the cumulative visibility analysis.

VI. Enforceable Limits/Compliance Date

To complete the BART process, you must establish enforceable emission limits and require compliance within a given period of time. In particular, you must establish an enforceable emission limit for each subject emission unit at the source and for each pollutant subject to review that is emitted from the source. In addition, you must require compliance with the BART emission limitations no later than 5 years after EPA approves your SIP. If technological or economic limitations in the application of a measurement methodology to a particular emission unit would make an emissions limit infeasible, you may prescribe a design, equipment, work practice, operation standard, or combination of these types of standards. You should ensure that any BART requirements are written in a way that clearly specifies the individual emission unit(s) subject to BART review. Because the BART requirements are ''applicable'' requirements of the CAA, they must be included as title V permit conditions according to the procedures established in 40 CFR part 70 or 40 CFR part 71.

Section 302(k) of the CAA requires emissions limits such as BART to be met on a continuous basis. Although this provision does not necessarily require the use of continuous emissions monitoring (CEMs), it is important that sources employ techniques that ensure compliance on a continuous basis. Monitoring requirements generally applicable to sources, including those that are subject to BART, are governed by other regulations. See, e.g., 40 CFR

[18] *Technical Support Documentation. Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Market Trading Program. An Annex to the Report of the Grand Canyon Visibility Transport Commission.* Section 6A.

[19] (The current draft of this document is entitled *Guidance for Attainment of Air Quality Goals for $PM_{2.5}$ and Regional Haze.* We expect this document will be released in final form before the publication of the final rule for the BART guidelines.)

part 64 (compliance assurance monitoring); 40 CFR 70.6(a)(3) (periodic monitoring); 40 CFR 70.6(c)(1) (sufficiency monitoring). Note also that while we do not believe that CEMs would necessarily be required for all BART sources, the vast majority of electric generating units already employ CEM technology for other programs, such as the acid rain program. In addition, emissions limits must be enforceable as a practical matter (contain appropriate averaging times, compliance verification procedures and recordkeeping requirements). In light of the above, the permit must:

- Be sufficient to show compliance or noncompliance (i.e., through monitoring times of operation, fuel input, or other indices of operating conditions and practices); and
- Specify a reasonable averaging time consistent with established reference methods, contain reference methods for determining compliance, and provide for adequate reporting and recordkeeping so that air quality agency personnel can determine the compliance status of the source.

VII. Emission Trading Program Overview

40 CFR 51.308(e)(2) allows States the option of implementing an emissions trading program or other alternative measure instead of requiring BART. This option provides the opportunity for achieving better environmental results at a lower cost than under a source-by-source BART requirement. A trading program must include participation by BART sources, but may also include sources that are not subject to BART. The program would allow for implementation during the first implementation period of the regional haze rule (that is, by the year 2018) instead of the 5-year compliance period noted above. In this section of the guidance, we provide an overview of the steps in developing a trading program [20] consistent with 40 CFR 51.308(e)(2).

A. What Are the General Steps in Developing an Emission Trading Program?

The basic steps are to:

(1) Develop emission budgets;

(2) Allocate emission allowances to individual sources; and

(3) Develop a system for tracking individual source emissions and allowances. (For example, procedures for transactions, monitoring, compliance and other means of ensuring program accountability).

B. What Are Emission Budgets and Allowances?

An emissions budget is a limit, for a given source population, on the total emissions amount [21] that may be emitted by those sources over a State or region. An emission budget is also referred to as an ''emission cap.''

In general, the emission budget is subdivided into source-specific amounts that we refer to as ''allowances.'' Generally, each allowance equals one ton of emissions. Sources must hold allowances for all emissions of the pollutant covered by the program that they emit. Once you allocate the allowances, source owners have flexibility in determining how they will meet their emissions limit. Source owners have the options of:

—Emitting at the level of allowances they are allocated (for example, by controlling emissions or curtailing operations),

—Emitting at amounts less than the allowance level, thus freeing up allowances that may be used by other sources owned by the same owner, or sold to another source owner, or

—Emitting at amounts greater than the allowance level, and purchasing allowances from other sources or using excess allowances from another plant under the same ownership.

A good example of an emissions trading program is the acid rain program under title IV of the CAA. The acid rain program is a national program—it establishes a national emissions cap, allocates allowances to individual sources, and allows trading of allowances between all covered sources in the United States. The Ozone Transport Commission's NO_X Memorandum of Understanding, and the NO_X SIP call both provide for regional trading programs. Other trading programs generally have applied only to sources within a single State. A regional multi-State program provides greater opportunities for emission trading, and should be considered by regional planning organizations that are evaluating alternatives to source-specific BART. The WRAP has recommended a regional market trading program as a backstop to its overall emission reduction program for SO_2. Although regional trading programs require more interstate coordination, EPA has expertise that it can offer to States wishing to pursue such a program.

C. What Criteria Must Be Met in Developing an Emission Trading Program as an Alternative to BART?

Under the regional haze rule, an emission trading program must achieve ''greater reasonable progress'' (that is, greater visibility improvement) than would be achieved through the installation and operation of source-specific BART. The ''greater reasonable progress'' demonstration involves the following steps, which are discussed in more detail below:

—Identify the sources that are subject to BART,

—Calculate the emissions reductions that would be achieved if BART were installed and operated on sources subject to BART,

—Demonstrate whether your emission budget achieves emission levels that are equivalent to or less than the emissions levels that would result if BART were installed and operated,

—Analyze whether implementing a trading program in lieu of BART would likely lead to differences in the geographic distribution of emissions within a region, and

—Demonstrate that the emission levels will achieve greater progress in visibility than would be achieved if BART were installed and operated on sources subject to BART.

1. How Do I Identify Sources Subject to BART?

For a trading program, you would identify sources subject to BART in the same way as we described in sections II and III of these guidelines.

2. How Do I Calculate the Emissions Reductions That Would Be Achieved If BART Were Installed and Operated on These Sources?

For a trading program under 51.308(e)(2), you may identify these emission reductions by:

—Conducting a case-by-case analysis for each of the sources, using the procedures described above in these guidelines in sections II through V;

—Conducting an analysis for each source category that takes into account the available technologies, the costs of compliance, the energy impacts, the non-air quality environmental impacts, the pollution control equipment in use, and the remaining useful life, on a category-wide basis; or

[20] We focus in this section on emission cap and trade programs which we believe will be the most common type of economic incentive program developed as an alternative to BART.

[21] An emission budget generally represents a total emission amount for a single pollutant such as SO_2. As noted in the preamble to the regional haze rule (64 FR 35743, July 1, 1999) we believe that unresolved technical difficulties preclude inter-pollutant trading at this time.

—Conducting an analysis that combines considerations on both source-specific and category-wide information.

For a category-wide analysis of available control options, you develop cost estimates and estimates of energy and non-air quality environmental impacts that you judge representative of the sources subject to BART for a source category as a whole, rather than analyze each source that is subject to BART. The basic steps of a category-wide analysis are the same as for a source-specific analysis. You identify technically feasible control options and rank them according to control stringency. Next, you calculate the costs and cost effectiveness for each control option, beginning with the most stringent option. Likely, the category-wide estimate will represent a range of cost and cost-effectiveness values rather than a single number.[22] Next, you evaluate the expected energy and non-air quality impacts (both positive and negative impacts) to determine whether these impacts preclude selection of a given alternative.

The EPA requests comment on an approach to the category-wide analysis of BART that would allow the States to evaluate different levels of BART control options (*e.g.,* all measures less than $1000/ton vs. all measures less than $2000/ton vs. all measures less than $3000/ton) through an iterative process of assessing relative changes in cumulative visibility impairment. For example, States or regional planning organizations could use $1000 or $2000/ton as an initial cutoff for selecting reasonable control options. The States or regional planning organizations could then compare the across-the-board regional emissions and visibility changes resulting from the implementation of the initial control option and that resulting from the implementation of control options with a $3000/ton cutoff (or $1500/ton, etc). This approach would allow States and other stakeholders to understand the visibility differences among BART control options achieving less cost-effective or more cost-effective levels of overall control.

3. For a Cap and Trade Program, How Do I Demonstrate That My Emission Budget Results in Emission Levels That Are Equivalent To or Less Than the Emissions Levels That Would Result If BART Were Installed and Operated?

Emissions budgets must address two criteria. First, you must develop an emissions budget for a future year[23] which ensures reductions in actual emissions that achieve greater reasonable visibility progress than BART. This will generally necessitate development of a ''baseline forecast'' of emissions for the population of sources included within the budget. A baseline forecast is a prediction of the future emissions for that source population in absence of either BART or the alternative trading program. Second, you must take into consideration the timing of the emission budget relative to the timetable for BART. If the implementation timetable for the emission trading program is a significantly longer period than the 5-year time period for BART implementation, you should establish budgets for interim years that ensure steady and continuing progress in emissions reductions.

In evaluating whether the program milestone for the year 2018 provides for a BART-equivalent or better emission inventory total, you conduct the following steps:

—Identify the source population included within the budget, which must include all BART sources and may include other sources,

—For sources included within the budget, develop a base year[24] emissions inventory for stationary sources included within the budget, using the most current available emission inventory,

—Develop a future emissions inventory for the milestone year (in most cases, the year 2018), that is, an inventory of projected emissions for the milestone year in the absence of BART or a trading program,

—Calculate the reductions from the forecasted emissions if BART were installed on all sources subject to BART,

—Subtract this amount from the forecasted total, and

—Compare the budget you have selected and confirm that it does not exceed this level of emissions.

Example: For a given region for which a budget is being developed for SO_2, the most recent inventory is for the year 2002. The budget you propose for the trading program is 1.2 million tons. The projected emissions inventory total for the year 2018, using the year 2002 inventory and growth projections, is 4 million tons per year. Application of BART controls on the population of sources subject to BART would achieve 2.5 million tons per year of reductions. Subtracting this amount from the project inventory yields a value of 1.5 million tons. Because your selected budget of 1.2 million tons is less than this value, it achieves a better than a BART-equivalent emission total.

4. How Do I Ensure That Trading Budgets Achieve ''Greater Reasonable Progress?''

In some cases, you may be able to demonstrate that a trading program that achieves greater emissions progress may also achieve greater visibility progress without necessarily conducting a detailed dispersion modeling analysis. This could be done, for example, if you can demonstrate, using economic models, that the likely distribution of emissions when the trading program is implemented would not be significantly different than the distribution of emissions if BART was in place. If distribution of emissions is not substantially different than under BART, and greater emissions reductions are achieved, then the trading program would presumptively achieve ''greater reasonable progress.''

If the distribution of emissions is different under the two approaches, then the possibility exists that the trading program, even though it achieves greater emissions reductions, may not achieve better visibility improvement. Where this is the case, then you must conduct dispersion modeling to determine the visibility impact of the trading alternative. The dispersion modeling should determine differences in visibility between BART and the trading program for each impacted Class I area, for the worst and best 20 percent of days. The modeling should identify:

—The estimated difference in visibility conditions under the two approaches for each Class I area,

—The average difference in visibility over all Class I areas impacted by the region's emissions. [For example, if six Class I areas are in the region impacted, you would take the average of the improvement in deciviews over those six areas].

[22] We request comment on whether these guidelines should recommend a weighted average of the values instead of presenting the values as a range.

[23] As required by 40 CFR 51.308(e)(2)(iii), emissions reductions must take place during the period of the first long-term strategy for regional haze. This means the reductions must take place no later than the year 2018.

[24] The base year must reflect the year of the most current available emission inventory, in many cases the year 2002, and this base year should not be later than the 2000–2004 time period used for baseline purposes under the regional haze rule.

The modeling study would demonstrate ''greater reasonable progress'' if both of the following two criteria are met:

—Visibility does not decline in any Class I area

Example: In Class I area X, BART would result in 2.5 deciviews of improvement but the trading program would achieve 1.4 deciviews. The criterion would be met because the trading program results in improvement of 1.4 deciviews, rather than a decline in visibility.

—Overall improvement in visibility, determined by comparing the average differences over all affected Class I areas

Example: For the same scenario, assume that ten Class I areas are impacted. The average deciview improvement from BART for the ten Class I areas is 3.5 deciviews (the 2.5 deciview value noted above, and values for the remaining areas of 3.9, 4.1, 1.7, 3.3, 4.5, 3.1, 3.6, 3.8 and 4.5). The average of the ten deciview values for the trading program must be 3.5 deciviews or more.

5. How Do I Allocate Emissions to Sources?

Emission allocations must be consistent with the overall budget that you provide to us. We believe it is not appropriate for EPA to require a particular process and criteria for individual source allocations, and thus we will not dictate how to allocate allowances. We will provide information on allocation processes to State and local agencies, and to regional planning organizations.

6. What Provisions Must I Include in Developing a System for Tracking Individual Source Emissions and Allowances?

The EPA requests comment generally on what the BART guidelines should require in terms of the level of detail for the administration of a trading program and for the tracking of emissions and allowances. In general, we expect regional haze trading programs to contain the same degree of rigor as trading programs for criteria pollutants. In terms of ensuring the overall integrity and enforceability of a trading program, we expect that you will generally follow the guidance already being developed for other economic incentive programs (EIPs) in establishing a trading program for regional haze. In addition, we expect that any future trading programs developed by States and/or regional planning organizations will be developed in consultation with a broad range of stakeholders.

There are two EPA-administered emission trading programs that we believe provide good examples of the features of a well-run trading program. These two programs provide considerable information that would be useful to the development of regional haze trading programs as an alternative to BART.

The first example is EPA's acid rain program under title IV of the CAA. Phase I of the acid rain reduction program began in 1995. Under phase I, reductions in the overall SO_2 emissions were required from large coal-burning boilers in 110 power plants in 21 midwest, Appalachian, southeastern and northeastern States. Phase II of the acid rain program began in 2000, and required further reductions in the SO_2 emissions from coal-burning power plants. Phase II also extended the program to cover other lesser-emitting sources. Allowance trading is the centerpiece of EPA's acid rain program for SO_2. You will find information on this program in:

—Title IV of the CAA Amendments (1990),
—40 CFR part 73 at 58 FR 3687 (January 1993),
—EPA's acid rain website, at www.epa.gov/acidrain/trading.html.

The second example is the rule for reducing regional transport of ground-level ozone (NO_X SIP call). The NO_X SIP call rule requires a number of eastern, midwestern, and southeastern States and the District of Columbia to submit SIPs that address the regional transport of ground-level ozone through reductions in NO_X. States may meet the requirements of the rule by participating in an EPA-administered trading program. To participate in the program, the States must submit rules sufficiently similar to a model trading rule promulgated by the Agency (40 CFR part 96). More information on this program is available in:

—The preamble and rule in the **Federal Register** at 63 FR 57356 (October 1998),
—The NO_X compliance guide, available at www.epa.gov/acidrain/modlrule/main.html#126,
—Fact sheets for the rule, available at www.epa.gov/ttn/rto/sip/related.html#prop,
—Additional information available on EPA's web site, at www.epa.gov/acidrain/modlrule/main.html.

A third program that provides a good example of trading programs is the the Ozone Transport Commission (OTC) NO_X budget program. The OTC NO_X budget program was created to reduce summertime NO_X emissions in the northeast United States. The program caps NO_X emissions for the affected States at less than half of the 1990 baseline emission level of 490,000 tons, and uses trading to achieve cost-effective compliance. For more information on the trading provisions of the program, see:

—Memorandum of Understanding (MOU), available at www.sso.org/otc/att2.HTM,
—Fact sheets available at www.sso.org/otc/Publications/327facts.htm,
—Additional information, available at *www.epa.gov/acidrain/otc/otcmain.html.*

The EPA is including in the docket for this rulemaking a detailed presentation that has been used by EPA's Clean Air Markets Division to explain the provisions of NO_X trading programs with State and local officials. This presentation provides considerable information on EPA's views on sound trading programs.

The EPA recognizes that it is desirable to minimize administrative burdens for sources that may be subject to the provisions of several different emission trading programs. We believe that it is desirable for any emission trading program for BART to use existing tracking systems to the extent possible. At the same time, we request comment on whether States and/or regional planning organizations should conduct additional technical analyses (and, if so, to what extent) to determine whether the time periods for tracking of allowances under existing programs (i.e., annual allowances for SO_2 for the acid rain program, and allowances for the ozone season for NO_X) are appropriate for purposes of demonstrating greater reasonable regional progress vis a vis BART. The EPA expects that if such analyses are conducted, they would be conducted in conjunction with the timelines for development of SIPs for regional haze.

7. How Would a Regional Haze Trading Program Interface With the Requirements for ''Reasonably Attributable'' BART Under 40 CFR 51.302 of the Regional Haze Rule?

If a State elects to impose case-by-case BART emission limitations according to 40 CFR 51.308(e)(1) of the regional haze rule, then there should be no difficulties arising from the implementation of requirement for ''reasonably attributable'' BART under 40 CFR 51.302. However, if a State chooses an alternative measure, such as an emissions trading program, in lieu of requiring BART emissions limitation on specific sources, then the requirement for BART is not satisfied until alternative measures reduce emissions sufficient to make ''more reasonable progress than BART.'' Thus, in that

period between implementation of an emissions trading program and the satisfaction of the overall BART requirement, an individual source could be required to install BART for reasonably attributable impairment under 40 CFR 51.302. Because such an overlay of the requirements under 40 CFR 51.302 on a trading program under 40 CFR 51.308 might affect the economic and other considerations that were used in developing the emissions trading program, the regional haze rule allows for a ''geographic enhancement'' under 40 CFR 51.308. This provision addresses the interface between a regional trading program and the requirement under 40 CFR 51.302 regarding BART for reasonably attributable visibility impairment. (See 40 CFR 51.308(e)(2)(v)).

The EPA recognizes the desirability of addressing any such issues at the outset of developing an emissions trading program to address regional haze. We note that the WRAP, the planning organization for the nine western States considering a trading program under 40 CFR 51.309 (which contains a similar geographic enhancement provision), has adopted policies which target use of the 51.302 provisions by the Federal Land Managers (FLMs). In this case for the nine WRAP States, the FLMs have agreed that they will certify reasonable attributable impairment only under certain specific conditions. Under this approach, the FLMs would certify under 40 CFR 51.302 only if the regional trading program is not decreasing sulfate concentrations in a Class I area within the region. Moreover, the FLMs will certify impairment under 40 CFR 51.302 only where: (1) BART-eligible sources are located ''near'' that class I area and (2) those sources have not implemented BART controls. In addition, the WRAP is investigating other procedures for States to follow in responding to a certification of ''reasonably attributable'' impairment if an emissions trading approach is adopted to address the BART requirement based on the sources' impact on regional haze.

The specific pollutants and the magnitude of impacts under the regional haze rule and at specific Class I areas may vary in different regions of the country. We expect that each State through its associated regional planning organization will evaluate the need for geographic enhancement procedures within any adopted regional emissions trading program.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: June 22, 2001.

Christine T. Whitman,

Administrator.

In addition to the guidelines described above, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

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

Authority: 23 U.S.C. 101; 42 U.S.C. 7410–7671q.

2. Section 51.302 is amended by revising paragraph (c)(4)(iii) to read as follows:

§ 51.302 Implementation control strategies for reasonably attributable visibility impairment.

* * * * *

(c) * * *

(4) * * *

(iii) BART must be determined for fossil-fuel fired generating plants having a total generating capacity in excess of 750 megawatts pursuant to ''Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities' (1980), which is incorporated by reference, exclusive of appendix E, which was published in the **Federal Register** on February 6, 1980 (45 FR 8210), except that options more stringent than NSPS must be considered. Establishing a BART emission limitation equivalent to the NSPS level of control is not a sufficient basis to avoid the detailed analysis of control options required by the guidelines. It is EPA publication No. 450/3–80–009b and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

* * * * *

3. Section 51.308 is amended by adding paragraph(e)(1)(ii)(C) as follows:

§ 51.308 Regional haze program requirements.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(C) Appendix Y of this part provides guidelines for conducting the analyses under paragraphs (e)(1)(ii)(A) and (e)(1)(ii)(B) of this section. All BART determinations that are required in paragraph (e)(1) of this section must be made pursuant to the guidelines in appendix Y of this part.

* * * * *

[FR Doc. 01–18094 Filed 7–19–01; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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User fees:

Veterinary services—

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Veterinary services; pet food facility inspection and approval fees; published 6-20-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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Pacific halibut and red king crab; comments due by 7-27-00; published 6-27-00

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Air quality implementation plans; approval and promulgation; various States:

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Spent nuclear fuel and high-level radioactive waste; independent storage; lic ensing requirements:

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S. 657/P.L. 107–19

To authorize funding for the National 4-H Program Centennial Initiative. (July 10, 2001; 115 Stat. 153)

Last List July 9, 2001

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